

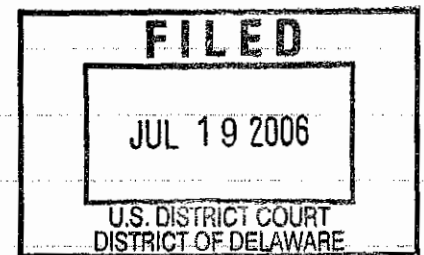
In the United States District Court
For the District of Delaware

Charles F. Cardone,
Petitioner,

v.
Thomas Carroll, Warden,
and Carl C. Danberg,
Attorney General of the
State of Delaware,
Respondents

Civil Action

NO. 06-127-KAJ



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ANSWER

This ANSWER is a continuation of Petitioner's clarification and correction to the numerous misrepresentations to the Court by respondents in maligning the enclosed known facts as evidence by the transcripts and other informations petitioner makes available to the Court in the enclosed documents. The date of this ANSWER is July 12, 2006. The date of petitioner's first ANSWER is July 6, 2006. The retrieval, gathering, and making copies of these enclosed documents to make available to the Court to support petitioner's writ of habeas corpus and to controvert respondents attempts to subvert the truths found in these transcripts and documents has taken petitioner the good part of a year. Furthermore, petitioner is still unable to produce the preliminary hearing transcripts, and the pre-trial

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transcripts of March 28, 2005, in which petitioner notifies the trial judge (Graves) of the ineffective assistance of counsel (IAC) I, Charles F. Cardone, have asserted in the § 2254. The following is the petitioner's continuation and rebuttal of respondent's assertions:

1. McFarlan states in her June 29, 2006, ANSWER, on page 2 of her Facts "Cardone urinated in the parking lot".... on page 26 of the enclosed March 28, 2005 trial transcript, the ~~trial~~ prosecutor, Ms. Ryan states at (13).... "and urinated in the parking lot." Yet, the state's witness, Boyer, at page 34 at (5) (6) and (7) states "No, I didn't." Ms. Ryan, petitioner points out to the Court, knowingly introduces her malicious prosecution by calling Boyer to the stand knowing that her witness will state to the jury she did not see me urinate. Thus, the beginning, by the State, of violating my due process rights protected by the Delaware State Constitution as well as our U.S. Constitution...

2. On page 35 of the trial transcript, Ms. Ryan

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Petitioner's ANSWER 06-127-KAJ, 7-12-06
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illicits further direct examination testimony from the officer who responded to the call from Royal Farms, that the clerk at Royal Farms said to patrolman Judson that I "urinated outside in the parking lot." At that point, Ms Ryan again uses testimony at (16) (17) (18) (19) of page 35 that the clerk, on page 34 at (5) (6) + (7) states "No, I didn't..."

TRIAL TRANSCRIPT

3. On pages 22, 23, 24, and 25, Ryan misrepresents to the Court by telling the trial judge that she will present evidence of me urinating in the parking lot... an event that was not witnessed... to put in context the event I was charged with. Ryan knowingly, and with the intent of malicious prosecution, introduced to the Grand Jury and the at trial jury, ~~testimony~~ evidence of her own choosing (lies) to get an indictment and a trial conviction of me. - At this point, allow me to state that I may not argue about the truthfulness of testimony or the importance of a piece of evidence, I may only challenge how the law was applied in relation to that testimony or evidence... the appellate process reviews errors of law, not errors in the facts of the case. I have, since my trial, found out that Ms. Ryan deliberately withheld exculpatory information (in my instance, Boyer admitted on the

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Petitioner's ANSWER - 06-127-KAJ - 7-12-06
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stand that she did not witness me urinating... this shows and proves that Ryan deliberately was inserting plain error into the discovery process and my attorney did not vigorously defend me by not compelling Ryan to disclose Boyer's untruthfulness while dialing 911 to report my public urination. Ryan, Graves, Abram, colluded to cause highly prejudicial errors that affected my substantial rights, and, to leave these issues unaddressed would cause a serious miscarriage of justice....

4. In McFarlan's Facts², page 2 of her June 29, 2006 ANSWER which the Court should have in their possession and that I have provided, McFarlan states "but Cardone reached into his pocket and pulled out a pocketknife", that is not true. Now, in the full and complete transcript I have enclosed and provided for the Court's consideration, when Ryan displays the surveillance tape in court starting on page 56 and continuing to and ending on page 85,... Ryan starts the surveillance tape on page 61 of the enclosed complete trial transcripts to show to the jury and the victim and witness and me entering the Royal Farms Store... Ryan shows bits and pieces of this surveillance tape just as she and my attorney, Abram, have provided bits and pieces of and excerpts of trial transcripts to the state courts (Superior and Delaware

Petitioner's ANSWER - 06-127- July 12, 06
DATED

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Supreme Courts) for the purposes of supporting the prosecutorial misconduct and ineffective assistance of counsel, respectively. Also, to support my allegations and charges of malicious prosecution and collusion on the part of Ryan, Abram, and Graves...

5. McFarlan further states in her Facts, on page 3 of her ANSWER, that I resisted arrest and a small pocketknife was found on me through a pat-down search... the only truth in the above was a small knife was found. Yes, a small knife was found (it was a gadget tool approx 1 inch in length, closed.) On page 51 of the trial transcript, Abram asked the State's witness, Taylor, "Did you see MR. Cardone physically resisting the police?"... Taylor says I shrugged my shoulder... next, Abram asks Taylor if I was violent in any way... she (Taylor) answers "I don't think so, no."

6. McFarlan, on pages 3, 4, 5, 6, 7, and 8, ^{of her ANSWER} it is evident that respondent's counsel has received docketed documents and paperwork from petitioner... the problem petitioner has, is I have, repeatedly, requested Clerk of the District Court to send me a copy of every document and/or paperwork so I may know what the Court has in their possession of the numerous

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documents and papers I have sent. I have asked the Clerks to send me a bill so I may pay for these papers (or, request the State to pay), only to be denied, repeatedly, by the Clerk.

On pages 3, 4, 5, 6, 7, and 8 of McFarlon's ANSWER, (of her DISCUSSION) she states "Here, Cardone has not presented any of his claims to the state supreme court." I, Charles F. Cardone, ~~am~~ am stating, again, that my court appointed attorney (appointed by Graves) Michael ABRAM, has denied my numerous requests (by certified and registered mail) to raise my stated claims in Abram's Rule 26 direct appeal to the Delaware Supreme Court. Abram's denial is one of the grounds I have raised in my petition for writ of habeas corpus. Petitioner now ~~has~~ submits proof to the Court of my claims of prosecutorial misconduct, malicious prosecution, numerous violations of my due process rights under State and U.S. Constitutional guarantees and requests of the Delaware District Court, again, to grant my \$2254. In the Court's granting of \$2254, I am demanding immediately release from custody of DOC, the suspension/or revocation of the licenses to practice law of Paula Ryan, Michael Abram of Ed. Gill's office, T. Henkey Graves.. and the awarding of one million dollars to me, Charles F. Cardone, in compensatory, →

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Petitioner's ANSWER- 06-127-KAJ- 7-12-06

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DATED

punitive damages and other reliefs and/or
damages deemed appropriate by the Court.

Charles F. Cardone

Petitioner

06-127-KAJ

¹²
Dated: July 13, 2006

Certificate of Service

* I, Charles F. Cardone, hereby certify under penalty of perjury that a true and correct copy of this ANSWER to the response by respondent's to my petition for a writ of habeas corpus in Civil Action No. 06-127-KAJ-Dated July 13, 2006, has been provided to the below-listed parties by placing said ANSWER in a postage paid envelope and mailing said envelope via United States mail this 16 day of July, 2006 to:

E. Elizabeth R. McFarlon
Deputy Attorney General
Dept. of Justice
820 N. French St.
Wilmington, DE 19801

* Service to include tran-
script of proceedings on
March 28, 2005... cfe
July 16, 06

by:
Charles F. Cardone
Petitioner
SBI #098159
DCC
1181 Paddock Rd.
Smyrna, DE

19977

IM Charles F. Cardone
SB# 098159 UNIT SHU(17)CU4

DELAWARE CORRECTIONAL CENTER

1181 PADDOCK ROAD

SMYRNA, DELAWARE 19977

LEGAL MAIL



*
Judge's Chambers, Kent A. Jordan
*

U.S. District Court
844 N. King St.
Wilmington
DE
19801-3570

D.I. 17

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CHARLES F. CARDONE,

Petitioner,

v.

Civ. Act. No. 06-127-KAJ

THOMAS L. CARROLL,

Warden, and CARL C. DANBERG,

Attorney General for the State of Delaware,

Respondents.

ANSWER

Pursuant to Rule 5 of the Rules Governing Section 2254 Actions, 28 U.S.C. foll. § 2254, respondents state the following in response to the petition for a writ of habeas corpus:

On September 7, 2004, the petitioner, Charles Cardone, was arrested, and he was subsequently indicted on charges of possession of a firearm during the commission of a felony, possession of a deadly weapon by a person prohibited, aggravated menacing, resisting arrest, and third degree criminal trespass. *See* Del. Super. Ct. Crim. Dkt. Items 1 & 2 in case no. 0409005091A. Cardone was also charged with violating his probation. *See* Del. Super. Ct. Crim. Dkt. in case no. 0201021864. The person prohibited charge was severed prior to trial. *See* Del. Super. Ct. Crim. Dkt. Item 27 in case no. 0409005091A. In March 2005, a Delaware Superior Court jury found Cardone not guilty of possession of a firearm during the commission of a felony, but guilty of aggravated menacing, resisting arrest and criminal trespassing. *Cardone v. State*, 2006 WL 686588, *1 (Del. Mar. 17, 2006). After a hearing in Superior Court on July 29, 2005, the Superior Court found that Cardone had violated the terms of his probation with respect to prior convictions for third degree and second degree assault. *See* Del. Super. Ct.

Crim. Dkt. Item 75 in case no. 0201021864. Cardone was sentenced to an aggregate (including his violation of probation sentence) of 14 years at Level V incarceration, suspended after successful completion of a substance abuse program for Level IV supervision, suspended in turn after successful completion of another substance abuse program for Level III supervision. Cardone appealed from his March 2005 conviction and sentence. *See* Del. Super. Ct. Crim. Dkt. Item 64 in case no. 0409005091A. On February 23, 2006, Cardone applied for federal habeas relief.¹ D.I. 1. The Delaware Supreme Court subsequently affirmed his conviction and sentence. *Cardone v. State*, 2006 WL 686588 (Del. Mar. 17, 2006).

Facts²

On September 6, 2004, Cardone spoke with an employee of the Royal Farms store in Rehoboth Beach, Delaware, and asked to use the bathroom. B1-2.³ When informed by the clerk that the bathroom was not for public use, Cardone urinated in the parking lot. B2-3. A police officer responded to the scene, issued Cardone a summons, and informed him that the management of Royal Farms did not want Cardone ever to return. B3-7.

The next evening, Cardone returned to the Royal Farms store and confronted a different clerk. B12-13. Cardone became hostile as he described the incident the night before, and asked the clerk, Letez Hudson, whether he had called the police. B13-14. Hudson told Cardone that he had not been working that night, but Cardone reached into his pocket and pulled out a pocketknife. B14. Fearing that Cardone might stab him with the knife, Hudson backed away

¹ *See Longenette v. Krusing*, 322 F.3d 758, 761 (3d Cir. 2003) (a prisoner's petition is considered filed on the date he delivers it to prison officials for mailing); *Burns v. Morton*, 134 F.3d 109, 111 (3d Cir. 1998). Cardone's petition is dated February 23, 2006, and that is presumed to be the date he turned it over to correctional officers for mailing. *See Woods v. Kearney*, 215 F. Supp. 2d 458, 460 (D. Del. 2002).

² These facts are taken from the *State's Answering Brief* in Del. Supr. No. 375, 2005.

³ References to "B" refer to the appendix to the *State's Answering Brief* in Del. Supr. No. 375, 2005.

and called 911 on his cell phone. B15-18. Cardone waved the knife in his hand, but then he left and went across the traffic circle to the 7-Eleven store. B8, 19-24, 28.

Cardone was standing in the coffee aisle of the 7-Eleven when the police arrived. B8. Officer Tyler Whitman repeatedly asked Cardone to put down his coffee cup and remove the headphones he was wearing. B8-9. Cardone appeared to ignore the officer. B27-29. Finally, Whitman knocked the headphones off Cardone's head and again asked him to put down his coffee cup. B9, 30. When Cardone did not comply, Whitman pushed the coffee out of the way, and instructed Cardone to keep his hands in the air, away from his pockets. B10. When Cardone tried to lower his hands, Whitman grabbed his arm and attempted to handcuff him. B10-11, 29. Cardone struggled and tried to pull away, but was eventually handcuffed and, with the assistance of two other officers, escorted out of the store. B27, 29-30. A pat-down search revealed a small pocketknife in Cardone's pants' pocket. B25-26, 31-33.

Discussion

In his petition for federal habeas relief, Cardone raises two grounds for relief: (1) his due process rights were violated by the failure of his court-appointed attorney to provide Cardone with transcripts of all court proceedings; and (2) ineffective assistance of appellate counsel for failure to raise certain issues on direct appeal. D.I. 1 at 6, 8. In a letter to this Court dated May 15, 2006, Cardone raises the following additional claims: (3) ineffective assistance of counsel (unspecified); (4) judicial misconduct by the Superior Court judge and the Delaware Supreme Court Chief Justice; (5) malicious prosecution by the Attorney General's office; and (6) state and federal violations of his due process rights under the state and federal constitutions. D.I. 12.

A state petitioner seeking federal habeas relief must first exhaust remedies available in the state courts. 28 U.S.C. § 2254(b); *Castille v. Peoples*, 489 U.S. 346, 351 (1989); *Rose v.*

Lundy, 455 U.S. 509, 515 (1982); *Picard v. Connor*, 404 U.S. 270, 275 (1971); *Alston v. Redman*, 34 F.3d 1237, 1241-42 (3d Cir. 1994). In order to demonstrate that a claim has been exhausted in state court, a petitioner "must show that he presented each claim to the Delaware Supreme Court." *Bailey v. Snyder*, 855 F. Supp. 1392, 1399 (D. Del. 1993); *see also Picard*, 404 U.S. at 275; *Stevens v. Delaware Corr'l Center*, 295 F.3d 361, 369 (3d Cir. 2002); *Burkett v. Love*, 89 F.3d 135, 138 (3d Cir. 1996); *Toulson v. Beyer*, 987 F.2d 984, 986 (3d Cir. 1993). The habeas petitioner must afford each level of the state courts a fair opportunity to address the claims. *See Doctor v. Walters*, 96 F.3d 675, 678 (3d Cir. 1993). Further, Cardone must have presented to the state courts the legal and factual basis of the claims which he presents to the federal habeas court. *See* 28 U.S.C. § 2254(b); *Duncan v. Henry*, 513 U.S. 364, 365 (1995); *Landano v. Rafferty*, 897 F.2d 661, 670-71 (3d Cir.), *cert. denied*, 498 U.S. 811 (1990); *Gibson v. Scheidemantel*, 805 F.2d 135, 139 (3d Cir. 1986).

Here, Cardone has not presented any of his claims to the state supreme court. The only claim presented on direct appeal by Cardone challenged the trial court's refusal to provide him a photocopy of his presentence report. *See Cardone*, 2006 WL 686588 at *1. Cardone complains now that he wanted to raise additional claims on direct appeal, but his counsel refused to present the claims that were suggested to him. D.I. 1 at 5. If Cardone is saying counsel's decision amounted to ineffective assistance, the proper procedural vehicle for raising ineffective assistance of counsel claims is a postconviction action under Superior Court Criminal Rule 61. *See Webster v. Kearney*, 2006 WL 572711, *4 (D. Del.); *Lecates v. Carroll*, 2003 WL 22937779, *4 (D. Del.). *See, e.g., Flamer v. State*, 585 A.2d 736, 753 (Del. 1990). The time for filing a

postconviction motion has not yet expired. Del. Super. Ct. Crim. R. 61(i)(1).⁴ In addition, as explained, for example, by this Court in *Lecates v. Carroll*, 2003 WL 22937779, *4 (D. Del.), none of the other procedural bars in Criminal Rule 61(i) would apply to a claim of ineffective assistance raised by Cardone. A fair reading of Criminal Rule 61 thus indicates that Cardone can present his allegations of ineffective assistance to the state courts, and in the absence of a state court decision clearly foreclosing his return to the state courts, Cardone has an available state remedy. *See Toulson v. Beyer*, 987 F.2d 984, 987-89 (3d Cir. 1993). Because Cardone has an available state remedy, resort to which is not clearly foreclosed, by which to present his claims of ineffective assistance, the claims are unexhausted. In turn, because Cardone's claims of ineffective assistance are not exhausted, the petition must be dismissed in its entirety unless Cardone voluntarily dismisses the unexhausted claims.⁵ *E.g.*, *Rose*, 455 U.S. at 520-21; *McMahon v. Fulcomer*, 821 F.2d 934, 940 (3d Cir. 1987).

✱ Cardone also asserts claims of judicial misconduct, malicious prosecution and violations of his due process rights. D.I. 12. These claims have not been presented to the state supreme court. A state prisoner seeking federal habeas relief must exhaust remedies available in the state courts. 28 U.S.C. § 2254(b); *Castille*, 489 U.S. at 351; *Rose*, 455 U.S. at 515. Ordinarily, a failure to exhaust a claim results in dismissal of the habeas petition, *Rose v. Lundy*, *supra*, or a

⁴ Under the rule, a prisoner has one year from the time that his conviction became final in which to file a state postconviction motion. (The rule was amended in July 2005 to reduce the filing period to one year.) Cardone's conviction became final, for purposes of the rule, on April 6, 2006 when the mandate issued by the state supreme court on Cardone's direct appeal. DEL. SUPER. CT. CRIM. R. 61(m)(2). Thus, Cardone has until April 2007 to move for state postconviction relief.

⁵ Under *Rhines v. Weber*, if the petition contains exhausted and unexhausted claims, a district court can, under very limited circumstances, stay the federal habeas proceedings pending exhaustion of state remedies to avoid barring from federal court a petitioner who has otherwise timely filed his petition. *See* 544 U.S. 269, 277 (2005). That procedure is not available in Cardone's case because he has not established good cause for failing to satisfy the exhaustion requirement. *See id.*

stay of the federal habeas proceedings to allow the prisoner to exhaust state court remedies (*Rhines v. Weber*, 544 U.S. 269 (2005)). If, however, there is no available state remedy, Cardone is excused from the exhaustion requirement. See *Teague v. Lane*, 489 U.S. 288, 298 (1989); *Castille*, 489 U.S. at 351-52. Because Cardone did not raise his judicial misconduct, malicious prosecution and due process claims on direct appeal, the claims are procedurally defaulted under Superior Court Criminal Rule 61(i)(3). See, e.g., *McLaughlin v. Carroll*, 270 F. Supp. 2d 490, 512-13 (D. Del. 2003).

Thus, because there is no available state remedy, Cardone is excused from the exhaustion requirement. See *Teague*, 489 U.S. at 297-98; *Castille*, 489 U.S. at 351-52; *Clark v. Pennsylvania*, 892 F.2d 1142, 1146-47 (3d Cir. 1989); *Lawrie v. Snyder*, 9 F. Supp. 2d 428, 454 (D. Del. 1998); *Dawson v. Snyder*, 988 F. Supp. 783, 804 (D. Del. 1997). However, because Cardone procedurally defaulted these three claims in the state courts, federal habeas review is barred unless he establishes cause for the procedural default and actual prejudice. *Coleman v. Thompson*, 501 U.S. 722, 750-51 (1991); *Caswell v. Ryan*, 953 F.2d 853, 861-62 (3d Cir. 1992); *McLaughlin*, 270 F. Supp. 2d at 513. To demonstrate cause for a procedural default, a petitioner must show that "some objective factor external to the defense" precluded his compliance with state procedural rules. *McClesky v. Zant*, 499 U.S. 467, 493 (1991); *Murray v. Carrier*, 477 U.S. 478, 487 (1986). Here, Cardone asserts ineffective assistance of appellate counsel in his petition, which can establish cause for a procedural default. E.g., *Werts v. Vaughn*, 228 F.3d 178, 193 (3d Cir. 2000); *Lines v. Larkin*, 208 F.3d 153, 166-67 & n.20 (3d Cir. 2000). As noted above, however, Cardone has failed to exhaust his ineffective assistance of counsel claims. See *Edwards v. Carpenter*, 529 U.S. 446, 452-53 (2000) (an ineffective-assistance-of-counsel claim asserted as cause for the procedural default of another claim can itself be procedurally defaulted);

Carrier, 477 U.S. at 488-89 (an allegation of constitutionally ineffective assistance of counsel as cause for a procedural default in a state court must itself be independently exhausted). Cardone has offered no explanation for his failure to present his ineffective assistance of counsel as cause for his default in the state courts, and thus this Court need not reach the question of whether he has shown any prejudice. *See Coleman*, 501 U.S. at 757; *Smith v. Murray*, 477 U.S. 527, 533 (1986); *McLaughlin*, 270 F. Supp. 2d at 513. Thus, consideration of Cardone's claims of judicial misconduct, malicious prosecution and due process violations are precluded because he procedurally defaulted the claims in state court.

In light of the foregoing, this Court should dismiss the petition without prejudice to provide Cardone the opportunity to present the unexhausted claims to the state courts. *See Rhines*, 544 U.S. at 273-74; *Rose*, 455 U.S. at 510, 522; *Lambert v. Blackwell*, 134 F.3d 506, 513 (3d Cir. 1997); *Webster*, 2006 WL 572711 at *2-3. Although the Court has discretion to stay the habeas proceedings to allow for exhaustion, the stay and abey procedure is appropriate only in cases where, *inter alia*, the petitioner has established good cause for failing to satisfy the exhaustion requirement. *See Rhines*, 544 U.S. at 277. Cardone has failed to offer any explanation for his failure to exhaust his state remedies, and thus the petition must simply be dismissed.

Conclusion

Based upon the Superior Court docket sheets, it appears that transcripts of Cardone's preliminary hearing (February 21, 2002) (0201021864), sentencing hearing (May 12, 2005) (0201021864 & 0409005091A), trial (March 28, 2005) (0409005091A), and violation of probation hearing (July 29, 2005) (0201021864), and sentencing (July 29, 2005) (0201021864 & 0409005091A) have been prepared. In the event that the Court directs the production of any

transcript, respondents cannot state with specificity when such transcript would be available. However, respondents reasonably anticipate that such production would take 90 days from the issuance of any such order by the Court.

For the foregoing reasons, the petition for a writ of habeas corpus should be dismissed without prejudice.

/s/ Elizabeth R. McFarlan
Deputy Attorney General
Department of Justice
820 N. French Street
Wilmington, DE 19801
(302) 577-8500
Del. Bar. ID No. 3759
elizabeth.mcfarlan@state.de.us

Date: June 29, 2006

IN AND FOR SUSSEX COUNTY

V.

CHARLES F. CARDONE,
Defendant.

: Please send a copy of this
 : manuscript back to me at DCC.

Cfe
December
12, 2005

BEFORE :

APPEARANCES :

MICHAEL R. ABRAM, Esquire,

* * * * *

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PROCEEDINGS

- - - - -

THE COURT: Good morning.

Let's proceed.

THE CLERK: We are about to select a jury in the case of the State of Delaware against Charles F. Cardone. This a criminal case and the charges against the defendant are: Possession of a deadly weapon during the commission of a felony, aggravated menacing, disorderly conduct, resisting arrest, criminal trespass in the third degree.

It is alleged the offenses occurred in Sussex County, on or about September 7, 2004. This trial will begin today and we estimate it will take two days.

Do you know anything about this case through personal knowledge, discussion with anyone, the news media or any other source?

Do you know the defendant or his friends or relatives?

The State is represented by Paula T. Ryan, a Deputy Attorney General. The defendant is represented by Michael Abram of the law firm of Edward C. Gill.

1 Do you know the attorneys in this case or any
2 other attorney or employee in the Offices of the
3 Attorney General or defense counsel?

4 Do you know any of the following persons who
5 might be called to testify as witnesses: Officer
6 Tyler Whitman, Rehoboth Beach Police Department;
7 Sergeant Paul Parsons, Rehoboth Beach Police
8 Department; Officer Shannon Judson, Rehoboth Beach
9 Police Department; Letez Hudson, Rehoboth Beach,
10 Delaware; Wayne Abbott, Milton, Delaware; Tara Boyer,
11 Lewes, Delaware; Joseph Klements, Rehoboth Beach,
12 Delaware; Delphia Taylor, Ellendale, Delaware?

13 Do you have any bias or prejudice either for
14 or against the State or the defendant?

15 Do you have any religious reasons or reasons
16 of conscious that would prevent you from serving as a
17 juror on this case?

18 Is there any reason why you cannot give this
19 case your undivided attention and rendered a fair and
20 impartial verdict?

21 Do you have any physical or mental disability
22 that would affect your ability to render satisfactory
23 jury service?

1 Are you being prosecuted for any criminal
2 offense anywhere?

3 Once again, this trial will begin today and
4 will last approximately two days.

5 If your answer to any of the above questions
6 is yes or you cannot serve through tomorrow, Tuesday,
7 March 29th, please come forward.

8 (Whereupon, counsel approached the bench and
9 the following proceedings were had:)

10 THE BAILIFF: Helen Fletcher, Your Honor.

11 (Whereupon, the prospective juror approached
12 the bench.)

13 THE COURT: Yes, ma'am.

14 PROSPECTIVE JUROR: I have a doctor's excuse
15 for my back, not being able to sit too long. I'd like
16 to try.

17 THE COURT: We take breaks for the court
18 reporters and for staff and for everyone every
19 hour-and-a-half or so.

20 PROSPECTIVE JUROR: I would like to stay.

21 THE COURT: Okay. Thank you.

22 (Whereupon, the prospective juror left the
23 bench and another prospective juror approached

1 the bench.)

2 THE BAILIFF: Troy Maull, Your Honor.

3 THE COURT: Good morning, sir.

4 PROSPECTIVE JUROR: I remember he was caught.

5 I have a doctor's appointment every three months. I

6 will --

7 THE COURT: I will excuse you.

8 (Whereupon, the prospective juror left the

9 bench and another prospective juror approached

10 the bench.)

11 THE BAILIFF: Dolena Bowden.

12 THE COURT: Good morning, ma'am.

13 PROSPECTIVE JUROR: The religious or

14 something?

15 THE COURT: If your religion -- if any

16 personal believes get in the way of being a juror and

17 making a fair and impartial decision, regardless of

18 what the consequences are, then I need to know that.

19 Will your religion get in the way?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: I will excuse you.

22 PROSPECTIVE JUROR: Do I have to call in?

23 THE COURT: No, you are excused for two

1 weeks. You are done.

2 PROSPECTIVE JUROR: Thank you.

3 (Whereupon, the prospective juror left the
4 bench and another prospective juror approached
5 the bench.)

6 THE BAILIFF: Gregory Oliver.

7 THE COURT: Yes, sir.

8 PROSPECTIVE JUROR: Good morning, Your Honor.
9 If I heard right, you want to know if I know somebody
10 in the Attorney General's Office?

11 THE COURT: Yes.

12 PROSPECTIVE JUROR: A friend and coworker is
13 Frederick Shank with the Attorney General in the
14 Department of Transportation.

15 THE COURT: Would knowing him and being
16 friends with him and working with him in any way
17 interfere with your ability to be fair and impartial
18 in this case?

19 PROSPECTIVE JUROR: No.

20 THE COURT: Would you favor the State's case
21 because of knowing him?

22 PROSPECTIVE JUROR: No, Your Honor.

23 THE COURT: Would you disfavor the State's

1 case because of knowing him?

2 PROSPECTIVE JUROR: No, Your Honor.

3 THE COURT: I will keep you on. Thank you.

4 (Whereupon, the prospective juror left the
5 bench and another prospective juror approached
6 the bench.)

7 THE BAILIFF: William Bradley, Your Honor.

8 THE COURT: Yes, sir.

9 PROSPECTIVE JUROR: Sir, the medical
10 problems, I got a lot of testing and --

11 THE COURT: I will excuse you for the rest of
12 the two weeks. You take care of yourself.

13 PROSPECTIVE JUROR: All right. Thank you.

14 (Whereupon, the prospective juror left the
15 bench and another prospective juror approached
16 the bench.)

17 THE BAILIFF: Cheryl Walls, Your Honor.

18 THE COURT: Hello.

19 PROSPECTIVE JUROR: I know Paula.

20 THE COURT: I will go ahead and excuse you
21 from this case and have you use the call-in number,
22 but I believe this is the only one, this case, but use
23 it.

1 PROSPECTIVE JUROR: Thank you.

2 (Whereupon, the prospective juror left the
3 bench and another prospective juror approached
4 the bench.)

5 THE BAILIFF: Amy Watson, Your Honor.

6 PROSPECTIVE JUROR: I am on probation.

7 THE COURT: I will excuse you from this case.
8 Thank you.

9 (Whereupon, the prospective juror left the
10 bench and another prospective juror approached
11 the bench.)

12 THE BAILIFF: Catherine Taylor.

13 THE COURT: Good morning.

14 PROSPECTIVE JUROR: I work with probation and
15 parole and I believe Mr. Cardone was on probation. He
16 has a violation pending.

17 THE COURT: I will excuse you from this case.

18 (Whereupon, the prospective juror left the
19 bench and another prospective juror approached
20 the bench.)

21 THE BAILIFF: Joseph Myers, Your Honor.

22 THE COURT: Yes, sir.

23 PROSPECTIVE JUROR: I thought I should let

1 you know, I go to the bathroom quite frequently.

2 THE COURT: Me too. I can't pass the
3 bathroom without the opportunity. If our breaks
4 aren't frequent enough, put your hand up if you are on
5 the jury.

6 PROSPECTIVE JUROR: That's what I came up
7 for.

8 THE COURT: Not a problem.

9 (Whereupon, the prospective juror left the
10 bench.)

11 THE COURT: Exceptions, if any?

12 MS. RYAN: No exceptions. I notice someone
13 on the list is Letonoff. There is a Letonoff officer
14 that works at the Rehoboth Beach Police Department. I
15 don't know if they are related somehow.

16 THE COURT: If she's called, we will bring
17 her up. If she gets on the panel, remind me and we
18 will bring her up and see if she knows anything about
19 the people.

20 MS. RYAN: It is a Rehoboth case.

21 MR. ABRAM: No exceptions.

22 THE COURT: Okay.

23 (Whereupon, counsel returned to the trial

1 table and the following proceedings were had:)

2 THE CLERK: When your names are called,
3 please come forward and have a seat in the jury box:

4 Sandra Banks.

5 Betty Taylor.

6 Joyce Figgs.

7 Joseph Maisano.

8 Verna Bertrand.

9 Sarah Alexander.

10 Curtis Davidson.

11 Gregory Oliver.

12 Mable Gaines.

13 Grace Lowe.

14 THE BAILIFF: Sir, she would like to speak to
15 you.

16 THE COURT: Sidebar.

17 (Whereupon, counsel approached the bench and
18 the following proceedings were had:)

19 THE BAILIFF: Grace Lowe.

20 (Whereupon, the prospective juror approached
21 the bench.)

22 THE COURT: Yes, ma'am?

23 PROSPECTIVE JUROR: I was just waiting it

1 out. When I read about it in the paper, I assumed he
2 was the husband of Joyce Cardone. If he is, I know
3 him. If he's not, he's okay. *? what the hell does this mean?*

4 THE COURT: I will go ahead and excuse you
5 because it was in the paper. I don't think there is a
6 whole lot -- it is an unusual name. I will be
7 cautious and excuse you.

8 MS. RYAN: For the record, I think he's
9 divorced.

10 THE COURT: Cardone is a different kind of
11 name. She said she read about something. She lives
12 in Lewes, so she's on that side of Sussex County.

13 (Whereupon, counsel returned to the trial
14 table and the following proceedings were had:)

15 THE CLERK: Ruth Smallwood.

16 Susan Bennett.

17 Dora Smith:

18 Gregory Oliver, please step out of the jury
19 box.

20 THE COURT: Any one excused, remain with the
21 panel and you will be excused at the end of the
22 selection process.

23 THE CLERK: Van Warrington.

1 Joseph Maisano, please step out of the jury
2 box.

3 Don Liller.

4 Verna Bertrand, please step out of the jury
5 box.

6 James Lindermeier.

7 Susan Bennett, please step out of the jury
8 box.

9 Judy Griffith.

10 Don Liller, please step out of the jury box.

11 John Zelewski.

12 MS. RYAN: The State is content.

13 MR. ABRAM: The defense is content.

14 THE COURT: Two alternates, one strike.

15 THE CLERK: Kimberly Messick.

16 Helen Fletcher.

17 MR. ABRAM: May we approach, Your Honor?

18 THE COURT: Yes.

19 (Whereupon, counsel approached the bench and
20 the following proceedings were had:)

21 MR. ABRAM: Ms. Messick is a correctional
22 officer at SCI. Mr. Cardone has quite a reputation.

23 I am sure she knows something about him. I'd like her

1 excused for cause.

2 THE COURT: Ms. Messick?

3 MR. ABRAM: Yes.

4 THE COURT: Mrs. Messick, can you come to the
5 sidebar.

6 PROSPECTIVE JUROR: Yes, sir.

7 (Whereupon, the prospective juror approached
8 the bench.)

9 THE COURT: You are a correctional officer?

10 PROSPECTIVE JUROR: Yes, sir.

11 THE COURT: I will go ahead and excuse you.

12 Even if you don't know him, you may come into contact
13 with him.

14 PROSPECTIVE JUROR: Okay. I figured, sir.

15 Thank you.

16 (Whereupon, the prospective juror left the
17 bench.)

18 Karen, replace her for cause.

19 MR. ABRAM: Thank you, Your Honor.

20 MS. RYAN: Thank you.

21 (Whereupon, counsel returned to the trial
22 table and the following proceedings were had:)

23 THE CLERK: Lee Whaley.

1 MR. ABRAM: The defense is content.

2 MS. RYAN: The State is content.

3 THE COURT: All right. The remaining panel,
4 I thank you very much. We are staying in session. So
5 please, when you excuse yourselves, do so quietly.
6 Please don't talk. You are excused. Use the call-in
7 number that was given to you. Court is in session.
8 Thank you.

9 Please swear the jury.

10 (Whereupon, after being examined on their
11 voir dire, a jury panel of twelve and two
12 alternates was duly impaneled and sworn.)

13 THE COURT: I am going to orient you, a
14 little further orientation.

15 JUROR No. 4: I had an issue.

16 THE COURT: Excuse me. Come to the sidebar.

17 (Whereupon, counsel approached the bench and
18 the following proceedings were had:)

19 (Whereupon, Juror No. 4 approached the
20 bench.)

21 JUROR No. 4: I didn't mean to disrespect
22 you. I didn't understand what the lady when she was
23 calling out the names was saying about if you cannot

1 be here. I didn't know I was going to get picked for
2 the jury and financially, I can't stay here another
3 day. I didn't mean to mess up anybody's process.

4 THE COURT: She was very clear. We give
5 clear instructions.

6 JUROR No. 4: That's what I'm saying: I
7 didn't understand what was said and no one ever
8 addressed it. Then I was called up here. I didn't
9 know what to do at that point.

10 THE COURT: We did address it, sir. The
11 clerk said if there is any reason why you cannot serve
12 for two days, actually she said that twice, you didn't
13 come up.

14 JUROR No. 4: Your Honor, I couldn't hear in
15 the back of the thing.

16 THE COURT: I will excuse you, sir.

17 JUROR No. 4: Thank you.

18 (Whereupon, the Juror No. 4 was excused and
19 left the courtroom.)

20 THE COURT: Exceptions?

21 MS. RYAN: No.

22 MR. ABRAM: No.

23 THE COURT: There was no point keeping

It is given as a matter of discretion at jury trials in Delaware. In Claudio, the Delaware Pattern Jury instructions were given after attorneys' openings, who was mine done before? 17

1 someone that didn't want to be on there.

2 (Whereupon, counsel returned to the trial

3 table and the following proceedings were had:)

4 THE COURT: Alternate No. 1 is now Juror No.

5 4. *INTRODUCTORY instruction - Delaware Pattern Jury Instruction 1C.* 17

6 Ladies and gentlemen, I am going to give you

7 some brief comments and then move over to Courtroom

8 No. 2. Hopefully the temperature will be cooler and

9 comfortable.

10 Mr. Cardone is charged with certain crimes by

11 the State. He is charged by the State filing certain

12 paperwork with this Court, what is called an

13 indictment or information. Its purpose is basically

14 severalfold, but what it does is it makes us aware of

15 the charges.

16 ~~It~~ It has no evidentiary value. The fact that

17 the State has filed it is no evidence concerning the

18 allegations the State makes. The purpose of the

19 indictment is to inform the defendant of the

20 accusations that the State is making and it informs

21 the Court it is making these accusations and, thereby,

22 when I give you the instructions at the end of the

23 case, I will refer to the indictment and to the

Bias & prejudiced statements by Gerson

1 elements of the specific crimes the State must prove
2 and their burden of proof. It also allows us to place
3 the case on the trial docket. So the fact that an
4 information or indictment has been filed has no
5 evidentiary value whatsoever.

*Bias +
prejudicial
statements
by Graves*

6 * The purpose today and tomorrow is basically
7 to put the State to its proof. The State must
8 overcome the presumption of innocence that all persons
9 charged with a crime enjoy. They must overcome that
10 presumption by prove beyond a reasonable doubt. And
11 if the State cannot do that, then you must find the
12 defendant not guilty. It's the State's burden. The
13 defendant has no burden at all. The defendant has no
14 burden to call witnesses or testify at all. Again,
15 the defendant is presumed innocent until the State can
16 establish its burden of proof.

17 In a few moments, after we move to the other
18 courtroom, the lawyers will be given the opportunity
19 to give you what is called opening statements. The
20 purpose of an opening statement is to allow the
21 lawyers to talk to you, to tell you who they are, what
22 their jobs are. They could talk a little bit about
23 the case, a little bit about the law involved.

(19)

1 Basically it's to kind of give you a review of what it
2 is going to be coming forward during the trial so it
3 may fit better logically for you so you understand.

4 At the end of the case, the lawyers get to
5 talk to you a second time. It is called closing
6 arguments. It is exactly what it sounds like. They
7 will argue their respective positions of the case as
8 to what you heard and how it fits their theories of
9 the case. The lawyers are professionals. They will

10 not try to mislead you or play games with you, but as

11 I told you, you must rely upon your collective

12 recollections of the events. The lawyers are not
13 witnesses. They will tell you what they think will

14 happen or what they think the testimony has been, but

15 you rely on your recollections when you go back to
16 deliberate.

17 Each of them are duty bound by their
18 constitutional oath when they became attorneys to make
19 certain objections when the lawyer thinks an objection
20 is appropriate under our rules of evidence. When a
21 lawyer makes an objection, he or she is not sitting
22 there saying: Gee whiz, I'd like to keep that away
23 from the jurors. They are not doing that at all.

*He is misleading
Jurors may
ask for transcripts
of testimony
to ask in
recollection*

1 They are basically asking me to follow the rules of
2 evidence and make certain decisions. They are legal
3 questions which don't involve you all. So the lawyers
4 know that I want them to come to the sidebar and argue
5 their positions. I can make my rulings. I have been
6 around long enough to know that even when I do this at
7 the sidebar, that you all usually can figure out what
8 my ruling is. I don't mind that. Whether I sustain
9 or overrule the objection -- sometimes you will hear I
10 will sustain the objection and strike it -- I do it at
11 the sidebar because it really helps me question and
12 helps me make my analysis, but you don't need to hear
13 all that because sometimes it is hard to unring the
14 bell if I say: Well, I sustained the objection,
15 ladies and gentlemen, forget about what you just
16 heard. Sometimes that is difficult. I try to make
17 your job a little easier for you. Please know by my
18 rulings, my body language, my demeanor, I am not
19 attempting to send you any message as to how you, the
20 jury, decide the case. As I spoke to you earlier
21 today, twelve of you will ultimately decide the case.
22 You will finally be the judges of the case. My job is
23 to be the neutral umpire.

DAVID WASHINGTON
Official Court Reporter

*He lost his neutrality when he
addressed the jury w/ his biased and
prejudicial statements
of me*

1 Now, if anything occurs during the course of
2 the trial, if you recognize anybody, you overhear
3 anything, anything that could affect that important
4 impartiality that we talked about this morning, don't
5 discuss it with anyone, don't discuss it with your
6 fellow jurors. If anything occurs in the courtroom,
7 put your hand up. We will notice you and talk to you
8 at the sidebar. If something occurs outside the
9 courtroom, let the bailiff know. Do not talk about it
10 with your fellow jurors. Let the bailiff know and we
11 will talk to you at the sidebar.

12 Finally, baseball season is upon us, so I am
13 more comfortable. In the words of Yogi Berra: It
14 ain't over til it's over; it ain't over til it's over.
15 You may catch yourself thinking that you figured out
16 what this is all about. Stop and say: It ain't over
17 til it's over. I don't want you jumping to
18 conclusions. I don't want you to try to solve the
19 mystery. I want you to hear everybody out. I want
20 you to hear the law and closing arguments. Then at
21 that time, you begin your deliberations. Once you
22 start jumping to conclusions, it's hard to move off
23 those positions. Well, it may be human nature to want

1 to discuss the case with your fellow jurors during
2 breaks or lunch or with other people, you are ordered
3 you cannot discuss the case even with each other until
4 the deliberations at the final end of the case.

5 Now we will go ahead and stay in session as
6 the jury is moved over to Courtroom 2 and we move over
7 and follow you.

8 (Whereupon, the jury left the courtroom.)

9 THE COURT: Okay. As soon as corrections can
10 get him to 2, we should be able to get started. They
11 will take him down and back up.

12 MS. RYAN: I didn't know whether they were
13 putting the jurors in the seats or in the jury room.

14 THE COURT: They will be in the jury room.

15 MS. RYAN: There is just something I want to
16 bring up before we get started.

17 THE COURT: Do it right now.

18 MS. RYAN: That's fine. Your Honor, the
19 allegations in this case involves an incident at the
20 Royal Farms in Rehoboth. What preceded the incident
21 that Mr. Cardone was charged with is something that
22 occurred the evening before, but the event he is
23 charged with, to put them in context, I will be

Paula tells the judge she is going to use prepared testimony by the clerk at Royal Farms

this is where

urinate.

(23)

1 presenting evidence of what occurred the evening
2 before.

3 THE COURT: The issues are?

Tara Sawyer

4 MS. RYAN: He went to the same Royal Farms
5 the evening before and asked to use the bathroom and
6 was told there wasn't a public bathroom he could use.

7 He went out and urinated in the parking lot of the

prosecutorial misconduct

8 Royal Farms. The police were called. He was issued a

9 summons for that in Alderman's Court for public
10 urination. The State anticipated having the clerk

she stated she did not see me urinate

11 that called 911 the evening before this happened, as

12 well as the officers, the police officer that issued

13 Mr. Cardone the summons. I don't believe this is a

14 404(b) issue. Out of an abundance of caution, I

15 wanted to bring it to the Court's attention. What

16 transpires the next evening, Mr. Cardone returns to

17 the Royal Farms despite being told not to return

no reduced to 3rd degree

18 that's the subject of the criminal trespass -- and

19 confronts another clerk and allegedly displays a knife

20 to him and confronts him saying: I was here the night

21 before, I asked to use the bathroom, it was you, it

no

22 was you The State believes to put that in context, I

23 need to present the events of the previous evening,

DAVID WASHINGTON
Official Court Reporter

She is making statements to G. issues that puts him in a bias + prejudicial position against me.

I did not say that, she is lying to G. raises to put me in a bad light

*why wasn't it
in the indictment?*
Getz

1 although that urination charge is not before the
2 Court.

3 THE COURT: Mr. Abram?

4 MR. ABRAM: It doesn't appear in the police
5 report from the night in question. There doesn't
6 appear to be any follow-up. The State hasn't informed
7 me what happened with this charge. They are
8 attempting to prove the criminal trespass by him being
9 told to stay away on that night after his arrest.

10 That night, there is no paperwork, no follow-up to
11 Alderman's Court, nothing. I find myself -- it is
12 Getz. I am trying to defend an incident that took
13 place when there is no police follow-up whatsoever or
14 stated actions whatever.

15 THE COURT: I don't understand what the
16 objection is to Getz. I will allow it. It's relevant
17 to motive and intent. It's almost inextricably
18 intertwined with the act the second day. It is in the
19 vacuum. You leave the jury scratching their head. It
20 goes to motive and intent. There are witnesses here
21 to testify as to that based upon the OFFER proffer as to two
22 witnesses. It is close in time. In doing the
23 prejudice versus the probative value, this is not the

*He overruled
Abram's
objection...*

*these
witnesses
say one
thing on
warrant and
impeach on
the stand*

(25)

1 first incident? It is not the type of crime that will
2 get the jury all worked up and create a lot of
3 prejudice. It is minimal prejudice. The only thing I
4 need to find out, you to tell me, I will give them a
5 Getz instruction, that you should not use the prior
6 incident to determine Mr. Cardone is a bad person and
7 use that as a conviction. It may be one of those
8 situations from a trial strategy point of view that
9 the defense may not want that type of instruction
10 because it makes it appear worse than what it is. So
11 you can tell me if you want the instruction, okay?

*He never
gave Getz
instruction*

12 MR. ABRAM: Okay. Thank you, Your Honor.

13 THE COURT: We will move to the other
14 courtroom.

15 (Whereupon, Court stood in recess. Following
16 which, Court reconvened and the following
17 proceedings were had:)

18 THE COURT: Good morning.

19 Let's bring the jury in.

20 THE BAILIFF: Yes, sir, Your Honor.

21 (Whereupon, the jury returned to the
22 courtroom.)

23 THE COURT: Openings.

1 MS. RYAN: Good morning, ladies and
2 gentlemen. My name is Paula Ryan. Seated to counsel
3 table is Officer Whitman of the Rehoboth Police
4 Department. What you will hear about today is a
5 couple of incidents that occurred at the Royal Farms
6 convenience store in Rehoboth, Delaware on the 6th and
7 7th of September, 2004. The story starts on the 6th
8 of September, 2004, when the defendant, Charles
9 Cardone, came into the convenience store and asked to
10 use the bathroom. The Royal Farms did not have a
11 public bathroom. Mr. Cardone was told that.
12 Mr. Cardone was not happy with this and went out into
13 the parking lot and urinated in the parking lot. The
14 police were called September 6th for this incident.
15 He was contacted by the police and issued a summons.
16 The following evening, despite being told not
17 to return to the Royal Farms, Mr. Cardone, the
18 defendant, returned to the Royal Farms. The evidence
19 will show that Mr. Cardone confronted the clerk that
20 was in there the previous evening and confronted him,
21 displayed a knife to him and he demanded to know
22 whether he was the one that called the police the
23 night before. You will hear from that clerk that

*was denied
by clerk.
She
knew
when
we
needed
to
go
to
perjure
them
on
stand*

1 occurred on September 7th, that he was confronted with
2 the knife. You will hear there was another individual
3 that was present. He walked in the convenience store
4 when this knife was displayed. You will hear from the
5 officers that were called on September 7th that
6 responded and located Mr. Cardone across the circle at
7 another convenience store, the 7-Eleven and located a ~~the~~
8 knife in his possession. He resisted arrest, you will ~~clearly~~
9 hear, and he caused something of a scene at the ~~cause a scene at~~
10 7-Eleven. You will hear from the clerk in the ~~7-11~~
11 7-Eleven that will describe what they viewed when Mr.
12 Cardone was placed in the car by the officers.

13 THE COURT: Mr. Abram, opening.

14 MR. ABRAM: Thank you, Your Honor.

15 Still morning. Good morning, ladies and
16 gentlemen. I am Michael Abram. Seated at the table
17 with me is Mr. Cardone. He is the defendant in this
18 case today. You have heard what the State has alleged
19 happened on these two days in question. You will hear
20 that some incidents occurred at the Royal Farms. The
21 one thing the State did not inform you about was the
22 size of the knife. You will get to see the knife
23 yourselves and you will be able to make the

The juror decided it was not a deadly weapon because the blade was not open.

28

1 determination as jurors if legally this was a deadly
2 weapon. You will see it's about the size, when
3 extended, of a toothpick, a very large toothpick, but
4 a toothpick. You will also hear that upon his coming
5 in contact with the police at the 7-Eleven that Mr.
6 Cardone was wearing headphones. Mr. Cardone,
7 according to the police, did not appear to understand
8 exactly what was going on before his alleged resisting
9 arrest occurred. You will hear all those things as
10 well.

11 I will point out to you, obviously the Judge
12 will certainly point out to you later, that the burden
13 of proof is on the State. You will not see much
14 coming from the defense because it's not our burden to
15 prove Mr. Cardone not guilty. It's the State's burden
16 beyond a reasonable doubt to prove him guilty. I ask
17 you take everything and listen carefully and come to
18 your own independent determination as to whether or
19 not the State has met their burden. Thank you.

20 THE COURT: Call your first witness.

21 MS. RYAN: The State calls Tara Boyer.

22 TARA BOYER

23 was called as a witness by and on behalf of the State

BOYER - DIRECT

1 of Delaware and, having been first duly sworn, was
2 examined and testified as follows:

3 DIRECT EXAMINATION

4 BY MS. RYAN:

5 Q. Ms. Boyer, where do you work?

6 A. Royal Farms.

7 Q. Were you working at the Royal Farms in
8 September of 2004?

9 A. Yes, ma'am.

10 Q. Specifically on September 6th of 2004, were
11 you working with Royal Farms?

12 A. Yes, ma'am.

13 Q. Which location?

14 A. Rehoboth.

15 Q. On September 6th, when you were working at
16 Royal Farms, do you recall an unusual incident
17 occurring?

18 A. Yes, ma'am.

19 Q. What do you recall occurring on
20 September 6th, 2004?

*who is she? why?
isn't she there?*

21 A. I had another employee at the CSL. She
22 called me outside, she asked me to come outside. I
23 came out by the phone booth. Her and a gentleman was

BOYER - DIRECT

1 standing there. The gentleman asked her could he use
2 the bathroom. She told him: We are not allowed to
3 let anyone use the bathroom because it's not a public
4 bathroom. He said to her, that if she didn't let him
5 use --

6 MR. ABRAM: Objection, Your Honor.

7 THE COURT: Sidebar.

8 THE WITNESS: -- the bathroom --

9 THE COURT: Excuse me, ma'am.

10 (Whereupon, counsel approached the bench and
11 the following proceedings were had:)

12 MR. ABRAM: She's recalling a prior
13 conversation. The whole thing is hearsay. *where is*

14 THE COURT: Your objection is whether or not
15 she was stating what allegedly your client said?
16 That's not hearsay.

17 MR. ABRAM: The other woman. She's not even
18 part of this conversation. *this other woman was not in discovery
and she was not available to be cross examined*

19 THE COURT: I understand. You didn't object
20 to that part.

21 MR. ABRAM: That's what -- if I have to stand
22 back up, then I will.

23 MS. RYAN: I believe this witness heard this.

BOYER - DIRECT

1 THE COURT: She can testify as to what she
2 heard the defendant say.

3 MS. RYAN: The defendant say.

4 MR. ABRAM: That's not the person I have the
5 problem with. It's the other person. *Appealable*

6 THE COURT: I'm not striking that. I don't
7 believe it's that great a thing. There was no
8 objection at the time. You need to stand up and make
9 the objection when it is coming out, not later. *biased and prejudicial*

10 MR. ABRAM: I understand.

11 (Whereupon, counsel returned to the trial
12 table and the following proceedings were had:)

13 THE COURT: Those same people I talked about
14 in orientation, that was the white noise we put on at
15 the sidebar to block out. The only unfortunate aspect
16 about the white noise is it goes right in the base of
17 my spine and gives me a headaches when it is on more
18 than 30 seconds. I apologize, but that's why it is
19 on. *what is he talking about?*

20 BY MS. RYAN:

21 Q. Ms. Boyer, focussing on what occurred when
22 you came outside the store, the gentleman you referred
23 to, did he say anything in your presence?

BOYER - DIRECT

(32)

1 A. Yes. He said that if we didn't let him use
2 the bathroom, he was going to pee outside publicly.
3 So I came back inside and I called 911 and Aaron was
4 still outside.

5 Q. Aaron, the other employee?

6 A. Yes, Aaron was the other employee there.

7 Q. Without getting into what she said, you
8 stated you went back inside and called the police?

9 A. Yes, ma'am.

10 Q. Did the police respond?

11 A. Yes, they did. After that, I went back

12 outside and he rode off on a bike. I did notice the
13 urine. He didn't urinate in front of the Royal Farms

14 He urinated in front of the laundromat. I came back

15 in and called the police. The police came. He asked

16 me questions. I gave them a description of the

17 person. They went on and they left and called us back

18 on the telephone and told us that they had apprehended

19 the person.

20 Q. When you came back out, you indicated you saw
21 the location of where Mr. Cardone urinated?

22 A. Yes, ma'am.

23 Q. Had that been out there when you came outside

1 the first time?

2 A. No, ma'am, because we have to clean the
3 parking lot. It was not there.

4 Q. The individual that was out with the other
5 employee when you came out and saw that man, do you
6 see him in the courtroom?

7 A. Yes, ma'am.

8 Q. Where is he?

9 A. He's sitting over there, right there with the
10 black vest on and white shirt.

11 MS. RYAN: I have nothing further.

12 THE COURT: Mr. Abram, questions, if any?

13 MR. ABRAM: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. ABRAM:

16 Q. You said you have to clean the parking lot?

17 A. Yes, we do.

18 Q. How often do you have to clean the parking
19 lot?

20 A. We do it every shift. Every shift. We have
21 to clean the parking lot periodically because we get
22 frequent people, shoppers. They check to see if the
23 parking lot is clean.

*They do not clean the laundry mat
parking lot
area...*

BOYER - CROSS

1 Q. How far beforehand had the parking lot been
2 cleaned?

3 A. I don't know because I came on later on that
4 day.

5 Q. And just to clarify: You didn't see Mr.
6 Cardone actually peeing, did you?

7 A. No, I didn't.

8 Q. And it could have been any liquid on the
9 ground, couldn't it?

10 A. There was no liquid on the ground until after
11 that happened. *After what happened?*

12 Q. Okay.

13 MR. ABRAM: No further questions, Your Honor.

14 MS. RYAN: I have nothing further.

15 THE COURT: The witness is excused. Thank
16 you, ma'am.

17 (Witness steps down.)

18 THE COURT: Call your next witness.

19 MS. RYAN: Patrolman Judson.

20 SHANNON JUDSON

21 was called as a witness by and on behalf of the State
22 of Delaware and, having been first duly sworn, was
23 examined and testified as follows:

JUDSON - DIRECT

DIRECT EXAMINATION

BY MS. RYAN:

Q. Patrolman Judson, where do you work?

A. Rehoboth Beach Police Department.

Q. Were you working for the Rehoboth Beach Police Department in September of 2004?

A. Yes, I was.

Q. On September 6th, 2004, did you have occasion to investigate an incident that occurred at the Royal Farms in Rehoboth?

A. Yes, I did.

Q. What, if anything, did you do in response to that?

A. I received a call from the Royal Farms that there was an individual that came into the store and wanted to use the bathroom. They informed him they

didn't have a public bathroom, at which time, he left

the establishment and urinated outside in the parking

lot. No one saw me... they lied to get me arrested...

Q. Did you have a description of the individual you were going to be investigating?

A. I believe at the time I only had the description of his clothing.

JUDSON - DIRECT

1 Q. Did you have a description of any mode of
2 transport?

3 A. He was on a bicycle.

4 Q. Did you attempt to look for this individual?

5 A. Yes, I did. The last call we got from the
6 Royal Farms they said he was on a bicycle and he was
7 heading westbound through the traffic circle towards
8 Route 1.

9 Q. Were you able to locate an individual by this
10 description?

11 A. Yes, I was. I located him on Rehoboth Avenue
12 Extended at the Henlopen Junction at the small strip
13 mall.

14 Q. Did he fit the description the individuals at
15 Royal Farms gave?

16 A. Yes, he did.

17 Q. What state and county is the Royal Farms
18 located in?

19 A. It's in Delaware, Sussex County, State of
20 Delaware.

21 Q. When you contacted this individual, did you
22 discuss with him what had reportedly occurred at Royal
23 Farms?

1 A. Yes, I did. When I contacted the individual,
2 I told him that we were informed by the management of
3 the Royal Farms that he had urinated in the parking
4 lot, at which time he told me that he wanted to use
5 the bathroom there and I guess they wouldn't let him,
6 so he went out in the parking lot and urinated. I *did not say that...*
7 explained to him that that's not really the thing to
8 do if you don't have a bathroom to use at the time and
9 also the management of the Royal Farms didn't want him
10 back there any more. *lies*

11 Q. You told him not to go back to the Royal
12 Farms?

13 A. *Yes. lies*

14 Q. Did he?

15 A. Yes, he did.

16 Q. Are there public bathrooms in Rehoboth?

17 A. Yes, there are.

18 Q. When you contacted this individual, you
19 indicated he fit the description that the Royal Farms
20 people had given you?

21 A. Yes.

22 Q. And that you discussed this incident with
23 him?

*they are
at least
1/2 mile away*

JUDSON - CROSS

1 A. Yes.

2 Q. Do you see that individual in the courtroom?

3 A. Yes, I do.

4 Q. Where is he?

5 A. Seated at the table right here to my left.

6 Q. What is he wearing?

7 A. Wearing a white shirt with a black vest.

8 Q. Did you take him into custody at that point?

9 A. No, I did not. At the time I issued the
10 subject a criminal summons to the Alderman's Court in
11 Rehoboth Beach and gave him a court date where he
12 needed to report and I cut him loose at that time.

*He did
not tell
me not to go
back to store*

13 MS. RYAN: I have nothing further.

14 THE COURT: Mr. Abram.

15 CROSS-EXAMINATION

16 BY MR. ABRAM:

Ineffective Cross examination

17 Q. Officer, you indicated there are public
18 bathrooms in Rehoboth Beach?

19 A. Yes, there are.

20 Q. Can you tell me approximately how far away
21 they are from the Royal Farms?

22 A. I believe there is the public bathrooms that
23 are just west of the Royal Farms in the park there.

DAVID WASHINGTON
Official Court Reporter

*Backrooms are
closed & locked that
time of day and time of
year*

JUDSON - CROSS

1 It's adjacent to the traffic circle. It is almost
2 right next door to the Royal Farms. There is a park
3 and there are restrooms there.

4 Q. Are you sure?

5 A. Fairly certain.

6 Q. Do they have hours on those bathrooms?

7 A. I am unaware of that.

8 Q. You said you asked -- told Mr. Cardone not to
9 go back to the Royal Farms? *We cannot be told not to go*
10 A. Yes. *into a public establishment, only*

11 Q. How did you do that? *by a Court order....*

12 A. I'm sorry?

13 Q. What method do you use to informing someone
14 they are not welcome in an establishment?

15 A. I informed Mr. Cardone it's the management's
16 wishes he do not return back to the property.

17 Q. Did you give him anything in writing that
18 said that?

19 A. No, I did not.

20 Q. Are you sure he understood you?

21 A. Yes.

22 Q. When you had this interaction with
23 Mr. Cardone, did he give you any problems?

JUDSON - REDIRECT

1 A. No, he did not.

2 MR. ABRAM: No further questions.

3 THE COURT: Any other questions?

4 MS. RYAN: Just one.

5 REDIRECT EXAMINATION

6 BY MS. RYAN: *more than one*

7 Q. You indicated Mr. Cardone was on a bicycle;
8 is that correct?

9 A. That's correct.

10 Q. He was riding the bicycle when you contacted
11 him?

12 A. I'm not certain.

13 Q. Did you ever see him riding the bicycle?

14 A. I saw him riding the bicycle prior to
15 contacting him. He was riding on the side of the road
16 and he went into the parking lot of the Henlopen
17 Junction.

18 Q. The public bathrooms, you indicated there was
19 one in the park right next to the Royal Farms?

20 A. I believe there is a public restroom.

21 Q. Are there other public bathrooms in Rehoboth?

22 A. Yes. At the time there was one at 1st and

23 Rehoboth. *Almost a mile away*

1 Q. How big is Rehoboth, your jurisdiction?

2 A. One square mile.

3 THE COURT: I have nothing further.

4 MS. RYAN: Nothing further.

5 THE COURT: Call your next witness.

6 Thank you. You are excused.

7 (Witness steps down.)

8 MS. RYAN: Your Honor, may we approach?

9 THE COURT: Yes.

10 (Whereupon, counsel approached the bench and
11 the following proceedings were had:)

12 MS. RYAN: I know I control order, but I
13 wanted to let the Court know we are proceeding in a
14 chronological matter. I have a witness that needs to
15 get back to work. I'm going to jump out of order. I
16 will jump to the end instead of continuing on.

17 THE COURT: Sure.

18 (Whereupon, counsel returned to the trial
19 table and the following proceedings were had:)

20 MS. RYAN: The State calls Gladys Taylor.

21 GLADYS TAYLOR

22 was called as a witness by and on behalf of the State
23 of Delaware and, having been first duly sworn, was

TAYLOR - GLADYS

1 examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MS. RYAN:

4 Q. Ms. Taylor, where do you work?

5 A. I work at the 7-Eleven in Rehoboth Beach on
6 Rehoboth Avenue.

7 Q. Were you working at the 7-Eleven on
8 September 6, 2004?

9 A. Yes.

10 Q. Do you recall an incident which occurred on
11 September 7th of 2004 within the 7-Eleven?

12 A. Yes.

13 Q. Can you describe what happened?

14 A. The gentleman, Mr. Cardone, came in the
15 7-Eleven and I could tell he had been drinking because
16 he sort of weaved a lot, you know, walking. He went
17 straight to the coffee aisle and I watched him because
18 I was hoping he didn't get sick. I was talking with
19 my granddaughter and her boyfriend. He took his time.
20 And then a couple minutes went by and three Rehoboth
21 police officers came past the window and came in.
22 They walked back to the coffee aisle where they found
23 him.

TAYLOR - GLADYS

1 Q. You indicated you were talking with your
2 granddaughter?

3 A. And her boyfriend.

4 Q. Physically present or talking to them on the
5 phone?

6 A. They were present. They were physically
7 present. I told them to get back because there might
8 be a problem. Mr. Cardone was making himself a cup of
9 coffee when the police officers got there. The one
10 police officer told him --

11 Q. Let me back you up. Can you describe the
12 individual that came in, his appearance?

13 A. Dressed casual. Had a big smile on his face.
14 Like I said, it was obvious he had been drinking by
15 the way he walked because he weaved.

16 Q. Did he have anything other than the coffee,
17 was he carrying anything or have anything on him?

18 A. I don't believe so. I didn't recall anything
19 being with him at that time.

20 Q. You indicated that there were three police
21 officers that came in?

22 A. Correct.

23 Q. You told your granddaughter and her boyfriend

TAYLOR - GLADYS

1 to do something?

2 A. I told them to get back away from the aisle.

3 I said, there might be a problem.

4 Q. Were there any other customers in the store?

5 A. None.

6 Q. Were you able to hear what, if anything,

7 occurred between the police officers and the

8 individual who was getting coffee?

9 A. Some things I did hear, yes. The police

10 officer asked Mr. Cardone to sit down his coffee,

11 which he had a large hot coffee in his hands. Then

12 the officer asked him to please -- well, I don't know

13 whether he said please or not. That's me. He said:

14 Take off your headphones.

She heard only what she wanted to hear..

15 Q. Headphones?

16 A. He was listening to the radio or telephone.

17 Q. He had something on his head?

18 A. Yes.

19 Q. He didn't respond?

20 A. He just looked at them. They repeated again

21 to remove the headphones. The officer brushed the

22 headphones of the top of his head. He said: Sit the

23 hot coffee down. He must have told him this three or

TAYLOR - GLADYS

1 four times to sit the hot coffee down. Then the
2 police officer reached over and pushed the coffee out
3 of his hand, away from the other officers. Then
4 again, he asked him repeatedly to keep his hands up,
5 away from his pocket, which he wouldn't do. He kept
6 trying to lower his hands in his pockets. Eventually,
7 the officer moved in and put his hands behind him to
8 get him out of the store.

9 Q. How did the individual react when the officer
10 moved in?

11 A. Pretty sure he was mumbling something. I
12 never really caught what he said, but the police
13 officers, after they had subdued him at the point they
14 put the handcuffs on him, put both arms behind him, he
15 sort of shrugged like, I really don't want to go where
16 you are going, I guess. I know the officers got him
17 outside. We have a small step off from the curb that
18 goes from the front of the sidewalk to the parking
19 lot. I think he just fell over his feet and the
20 officers picked him up and put him in the squad car
21 and took him out, which I was quite relieved of that.

22 Q. You indicated you could hear some of what was
23 being discussed. Did you specifically hear the

TAYLOR - GLADYS

1 officers telling him to remove the headphones?

2 A. Yes, ma'am.

3 Q. On more than one occasion?

4 A. On more than one occasion: Remove the
5 headphones. The officer didn't hit him hard because
6 the man's head never moved. He brushed the headphones
7 off the top of his head.

*coffee didn't
hit me at
all RHE
was under
arrest*

8 Q. With regard to the coffee, did you hear the
9 officers telling him to put the coffee down?

10 A. At least three to four times.

11 Q. Did he put the coffee down?

12 A. No, ma'am. The officer had to knock the
13 coffee out of his hand, like I said, away from the
14 other officers.

15 Q. When the officers moved in to place handcuffs
16 on him, did they place handcuffs on him?

17 A. Yeah. I don't know whether they got both
18 sides of the handcuffs on or not. I know the one
19 officer was trying to hold the hand behind him.

20 Q. Was he having trouble doing that?

21 A. Yes, he was sort of shrugging, wiggling. I
22 think the main objective was to get him out of the
23 store before customers did come into the store.

1 Q. Was he, in any way, verbally making any kind
2 of noise or disturbance in the store?

3 A. Not in the store. When the officers were
4 with him, I heard something come from his mouth, but I
5 didn't make out exactly what it was. It didn't sound
6 like it was very nice. I didn't care to hear whatever
7 it was that came out of his mouth.

8 Q. You don't specifically recall what it was?

9 A. No, I don't.

10 Q. This individual that came in the 7-Eleven on
11 September 6th that got the coffee, do you see him in
12 the courtroom?

13 A. I think his beard is a little longer than it
14 was then. He looks a lot more reserved than he did
15 then.

16 Q. Are you indicating anybody in particular in
17 the courtroom?

18 A. The gentleman with the blue vest and white
19 shirt on.

20 Q. When you say "he looks a little more reserved
21 than he did then", were there some differences in the
22 way he was behaving then?

23 A. Well, I can tell the gentleman is sober

TAYLOR - CROSS

1 today. When I saw him, he was walking, like I said,
2 he was walking down the aisle to the coffee, which is
3 maybe as far as me to you and to your left, and he was
4 having trouble making his steps. His feet hit the
5 floor where his legs were going. *First she said I was weaving,
then this*

6 MS. RYAN: I have nothing further.

7 THE COURT: Mr. Abram.

8 CROSS-EXAMINATION

9 BY MR. ABRAM:

10 Q. When Mr. Cardone came in the store at first,
11 you didn't have any problems with him, did you?

12 A. No.

13 Q. And he just went over and got his coffee; is
14 that correct?

15 A. Went over and got his coffee, yes.

16 Q. You didn't ask your granddaughter and
17 boyfriend to step away at that time, did you?

18 A. No.

19 Q. You only asked them to step back when the
20 police arrived; is that right?

21 A. Correct.

22 Q. If the police hadn't arrived, would you have
23 called the police?

TAYLOR - CROSS

① A. If I kept my eye on him and he had done
2 anything out of the way, if he had stumbled with the
3 coffee or spilled something, then I would have
4 probably realized the man needed a little bit more
5 help, he needed to be taken away. *help doing what?*

6 Q. At the point that you saw him, had he done
7 anything that would make you call the police?

8 A. No.

9 Q. You said he was listening to headphones and
10 you don't know what he was listening to. He had a
11 pair of headphones on?

12 A. Headphones on his head.

13 Q. You said you heard music coming out?

14 A. I didn't say that.

15 Q. You didn't say that?

16 A. No, sir.

17 Q. You didn't hear anything coming out of them?

18 A. No, sir.

19 Q. You said you heard some noises coming out of
20 Mr. Cardone? *She started to say arrested, but she couldn't say that because no one told me I was being arrested.*

21 A. When Mr. Cardone was being -- after he was
22 apprehended to be removed from the store, I heard
23 mutterings from Mr. Cardone. I didn't make them out.

1 I was at the front register by the door where he would
2 be, maybe, at the chair behind you from me in the back
3 of the store.

4 Q. That's about the same distance the police
5 were away from you, wasn't it?

6 A. Yes, sir.

7 Q. You heard them?

8 A. The police used them, used the command.

9 Mr. Cardone was not commanding. The police were
10 apprehending this gentleman and I figured there had to
11 be some reason or they wouldn't be in here in the
12 force of three. That's why I told my grandchildren to
13 get back away from the front of the store in case
14 there was a problem.

15 Q. The police used a commanding tone right away
16 when they walked in?

17 A. No. One officer walked up to him and said:
18 Put the coffee down. I believe I am saying this
19 correctly. And then when he didn't respond, he said:
20 Remove your headphones or the head thing on his head,
21 which he didn't respond. And after about the third,
22 maybe even the fourth command, he reached up and
23 flipped it off the top of his head, then he asked him

*She is trying to justify
her lies*

1 to sit the hot coffee down on the counter.

2 Q. Was there anything that Mr. Cardone did
3 himself that caused a disturbance in the Royal Farms?

4 P A. I worked at the Royal Farms since I worked at
5 the 7-Eleven -- *DAVID Washington, the court reporter, is not transcribing correctly.*

6 Q. I'm sorry, anything that you saw.

7 I withdraw the question.

8 Did you see Mr. Cardone physically resisting
9 the police?

10 A. I did see Mr. Cardone trying to -- in other
11 words, he didn't just say: Go ahead, I'm going out of
12 the store. He sort of shrugged his shoulder in the
13 way of saying verbally: I don't wish to go, is what I
14 saw.

15 Q. Was he violent in any way?

16 A. I don't think so, no.

17 MR. ABRAM: I have no further questions, Your
18 Honor.

19 THE COURT: Witness excused?

20 MS. RYAN: Yes.

21 THE COURT: Thank you, ma'am.

22 (Witness steps down.)

23 THE COURT: Call your next witness.

KLEMENTS - DIRECT

1 MS. RYAN: The State calls Joseph Klements.

2 JOSEPH KLEMENTS

3 was called as a witness by and on behalf of the State
4 of Delaware and, having been first duly affirmed, was
5 examined and testified as follows:

6 BY MS. RYAN:

7 Q. Mr. Klements, how are you employed?

8 A. I am a manager of the Royal Farms in Rehoboth
9 Beach.

10 Q. Were you managing the Royal Farms store in
11 Rehoboth Beach in September of 2004?

12 A. I was.

13 Q. On September 7, 2004, were you the manager of
14 the Royal Farms in Rehoboth?

15 A. I was.

16 Q. Did the Royal Farms in Rehoboth have
17 surveillance?

18 A. It does.

19 Q. What kind of system did the Royal Farms have?

20 A. We have a electronic system. The cameras all
21 are electronically recorded onto a computer disc.

22 Q. You indicated there are a number of different
23 cameras within the store?

why wasn't Joe asked about the incident?

why wasn't he asked if he was witness to what the State says I did?

KLEMENTS - DIRECT

1 A. There are, yes.

2 Q. On September 7th, 2004, did you have occasion
3 to make a copy of the surveillance for that evening
4 for the police?

5 A. I did, yes.

6 Q. Did you make a copy?

7 A. I did.

8 Q. Were you able to successfully take the
9 surveillance from your computer disc and place it on
10 some other component?

11 A. Yes, it was placed on a DVD.

12 Q. Did you turn that over to the police?

13 A. I did.

14 MS. RYAN: May I approach the witness, Your
15 Honor?

16 THE COURT: You may.

17 MS. RYAN: May I have this marked for
18 identification, please.

19 THE CLERK: Marked as State's A for
20 Identification.

21 BY MS. RYAN:

22 Q. Mr. Klements, I will hand you what was marked
23 as State's A for Identification and ask if you

KLEMENTS - DIRECT

1 recognize it?

2 A. Yes, I do.

3 Q. What do you recognize that to be?

4 A. This is a case and the DVD that I created
5 that evening from our image system.

6 Q. Do they appear to be in the same condition as
7 when you turned them over to the police?

8 A. Pretty much, yes.

what is different?

9 MS. RYAN: Your Honor, may we approach?

10 THE COURT: You may.

11 (Whereupon, counsel approached the bench and
12 the following proceedings were had:)

13 MS. RYAN: Technology time. I need a minute
14 to set up -- I need a few minutes to warm up. I
15 haven't called the victim yet to explain what
16 happened. I need to display the surveillance without
17 displaying the instrument and ask him whether or not
18 that's what he provided the police so we can look at
19 the actual disc.

20 THE COURT: Are you objecting to the tape?

21 MR. ABRAM: No.

22 MS. RYAN: I'm just dotting the I's.

23 THE COURT: Let him cross-examine him while

1 you are doing that.

2 MS. RYAN: He was not there at the time.

3 MR. ABRAM: I don't think I have any cross.

*Ineffective
Assistance
of Counsel*

4 THE COURT: No objection to move it in and
5 introduce it with the next witness?

6 MR. ABRAM: Okay.

7 MS. RYAN: Thank you.

8 THE COURT: You can introduce it. As soon as
9 you go back, mark it and move to introduce it if he is
10 not objecting to it.

11 MS. RYAN: Okay.

12 (Whereupon, counsel returned to the trial
13 table and the following proceedings were had:)

14 MS. RYAN: Your Honor, the State moves the
15 item that was marked as State's A for Identification,
16 introduce it into evidence as the State's first
17 exhibit.

18 MR. ABRAM: No objection.

19 THE COURT: It's admitted.

20 THE CLERK: State's A for Identification is
21 now admitted as State's Exhibit No. 1.

22 MS. RYAN: I have nothing further.

23 MR. ABRAM: No questions, Your Honor.

DAVID WASHINGTON
Official Court Reporter

*Fucked up...
that tape
shows nothing... why didn't
Abram point out nothing
could be seen from
because I didn't
thing to
see*

HUDSON - DIRECT

1 THE COURT: You are excused, sir. Thank you.

2 (Witness steps down.)

3 THE COURT: Call your next witness.

4 MS. RYAN: The State calls Letez Hudson.

5 THE COURT: Do you want this thing to start

6 warming up? Whatever you have to do. We will take *Groves is hurryin' to get this over.*
7 maybe one more witness. You are moving fairly fast.
8

LETEZ HUDSON

9 was called as a witness by and on behalf of the State
10 of Delaware and, having been first duly affirmed, was
11 examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MS. RYAN:

14 Q. Mr. Hudson, were you employed in September of
15 2004?

16 A. Yes, I was.

17 Q. Where did you work in September of 2004?

18 A. Royal Farms.

19 Q. What was your job there?

20 A. Clerk, cashier.

21 Q. Were you working at Royal Farms on September
22 7, 2004?

23 A. Yes, ma'am.

HUDSON - DIRECT

1 Q. Did something unusual happen during your
2 shift --

3 A. Yes.

4 Q. -- on the 7th?

5 A. Yes.

6 Q. Can you describe for the jury what happened?

7 A. Well, that night I was working at the
8 register and I heard like a little banging noise at
9 one of the side entrances at our store, but the door
10 was locked. As the person went around to the front, I
11 could see, you know, he might have been kind of drunk
12 the way he was walking. He had a headset on his head,
13 like he was listening to some kind of music as he keep
14 at the door. I approached him at the door to figure
15 out what was wrong and what I could help him with. He
16 began to tell me that he was inside before, he came in
17 there and asked to use the bathroom. The people said
18 the restroom they had was not public, so he had to go
19 somewhere else to use the bathroom. I guess at that
20 point he got kind of hostile. And I found out he *He urinated*
21 urinated on the sidewalk and they called the cops.

22 Q. You found that out later?

23 A. Yeah.

*Sidewalk? I thought
it was the parking
lot?*

HUDSON - DIRECT

1 Q. At the time that you were talking to this
2 person and you asked to help him, what did he say to
3 you?

4 A. He told me somebody had called the cops on
5 him the night before. He was like: Is it you, is it
6 you, I want to find out who it was. I'm telling him,
7 it wasn't me because I had not been working the night
8 before. That's when he started getting, you know,
9 kind of hostile with me. I think at that point I seen
10 him reach in his pocket and pull out the knife. I
11 pretty much notified him, told him as I'm backing
12 away: I'm calling 911.

13 Q. You said he pulled out a knife?

14 A. Yeah.

15 Q. What kind of knife?

16 A. Like a pocketknife.

17 Q. Did he have any of the items out of the
18 pocketknife?

19 A. I can't recall exactly what was out. You
20 know, he reached in and pulled it out. I backed away
21 too fast to see whether the blade was out or not.

22 Q. You didn't see the blade out?

23 A. No.

HUDSON - DIRECT

1 Q. What kind of pocketknife was it? Can you
2 describe it, the color or anything like that?

3 A. Vaguely I can remember -- I'm thinking it was
4 kind of tan, silver.

5 Q. When he pulled this item out of his pocket,
6 what did he do with it in relation to you?

7 A. I mean, he held it in his hand. Then he
8 started to walk a little bit towards me. By that
9 time, I was already in the back of the store. I had
10 my cell phone. That's when I was calling the cops.

11 Q. What did you think was going to happen?

12 A. I thought that he was going to try to come
13 out at me with the knife, try to stab me, that's why I
14 backed away.

15 Q. Could you see this knife in his hand?

16 A. Yeah, I saw the knife in his hand.

17 MS. RYAN: I'd like this item marked for
18 identification purposes.

19 THE CLERK: Marked as State's B for
20 Identification.

21 BY MS. RYAN:

22 Q. Mr. Hudson, I will hand you an envelope that
23 has an item that's been marked as State's B for

HUDSON - DIRECT

1 Identification and ask you to take a look in that
2 envelope and see if you recognize what is in the
3 envelope. You can take it out, if you need to.

4 A. Yeah.

5 Q. Do you recognize that item?

6 A. Yeah.

7 Q. What's that item look like to you?

8 A. A pocketknife.

9 Q. Does it look familiar to you?

10 A. Yes.

11 Q. In what way?

12 A. The size of it.

13 Q. You indicated you backed away. What did you

14 do after you backed away?

15 A. Told him I was going to call the cops and I

16 took my cell phone out and dialed 911.

17 Q. You had your own cell phone?

18 A. Yes.

19 Q. Does the store have phones?

20 A. Yes, but the store phones was at the register
21 at the front. He was at the front entrance of the
22 store. So instead of me trying to run towards and go
23 past him, I went to the back of the store.

HUDSON - DIRECT

1 Q. When you called 911, did you speak with a
2 dispatcher?

3 A. Yes.

4 Q. Does the Royal Farms have surveillance?

5 A. Yes, they did have those at the time.

6 Q. Were they operational on September 7th?

7 A. Yes, it was.

8 MS. RYAN: I am going to ask permission to
9 display State's Exhibit 1 to the jury.

10 THE COURT: Yes. If you would like, we can
11 break for lunch now and finish out -- *Graves is in a hurry and*
the jury can sense it.

12 MS. RYAN: No, it is ready, Your Honor. I
13 was just asking him something.

14 THE COURT: All right.

15 (Whereupon, State's Exhibit No. 1 was played
16 to the Court and jury.)

17 BY MS. RYAN:

18 Q. Mr. Hudson, I am displaying something from
19 the Royal Farms. Can you describe what is depicted in
20 this image?

21 A. That's the front entrance of the store.

22 Q. You indicated in your testimony you heard
23 some kind of noise?

HUDSON - DIRECT

1 A. Yes, the noise came from the back door all
2 the way in the back of the store.

3 MS. RYAN: Your Honor, I would ask for the
4 laser pointer.

5 BY MS. RYAN:

6 Q. I am going to advance this in time and I ask
7 you to let me know when you see yourself, if you see
8 yourself.

9 A. That's me.

10 Q. That's you?

11 A. Yes.

12 Q. What are you doing here?

13 A. I am looking as the man is walking from back
14 there to the front.

15 Q. Now, that individual that just walked through
16 there, do you recognize that individual?

17 A. Yes, ma'am.

18 Q. Is he the one you described in your testimony
19 that you talked to that night?

20 A. Yes.

21 Q. Do you see him in the courtroom?

22 A. Yes.

23 Q. Where is he?

HUDSON - DIRECT

1 A. Right there. (Indicating.)

2 Q. Can you tell me what he's wearing?

3 A. Black vest, white shirt.

4 MS. RYAN: Your Honor, may I approach the
5 witness?

6 THE COURT: Yes.

7 BY MS. RYAN:

8 Q. Mr. Hudson, I have the laser pointer here.
9 If you push the red button you can indicate things on
10 the screen. Can you indicate with the pointer the
11 area where you heard the noises before you walked over
12 to the other part of the store?

13 A. (Witness complies.)

14 Q. Back there?

15 A. Yes.

16 Q. Is the door open or accessible to the public?

17 A. It is during the day. As it gets later,

18 dark, we lock the doors. *It was not dark*

19 Q. You indicated you heard something back there
20 first?

21 A. Yes.

22 Q. I am going to advance this basically second
23 by second. Did you have a conversation with him at

HUDSON - DIRECT

1 this point?

2 A. I think the conversation started as he got
3 into view more.

4 Q. You are talking to somebody here?

5 A. That is probably him. Yeah, I am talking to
6 him.

7 Q. Is this the period where you are discussing
8 what had occurred the night before?

9 A. Yes.

10 Q. He asked you whether you had called the
11 police?

12 A. Yeah.

13 Q. Had you been in there the night before?

14 A. No.

15 Q. What's happening there?

16 A. He has the knife and he's coming at me.

17 Q. What is happening there?

18 A. I'm going to the back of the store to call
19 911.

20 Q. Did you tell him you were going to call the
21 police?

22 A. Yeah.

23 Q. What's happening there? Do you see yourself

*why wasn't Hudson
asked to point out the
knife & allegedly
had in my hand?*

HUDSON - DIRECT

1 there?

2 A. Yes, I can see myself there.

3 Q. What are you doing there?

4 A. I guess I'm standing there watching him go
5 out. I'm coming back around. I'm thinking at that
6 point, he's done left and gone across the street.

7 Q. Did you call the police?

8 A. Yeah. I was probably still on the phone with
9 them.

10 MS. RYAN: Your Honor, may we approach for
11 scheduling? *what scheduling? why isn't this discussion on record?*

12 THE COURT: Yes.

13 (Whereupon, counsel approached the bench and
14 a discussion took place off the record. After
15 which, counsel returned to the trial table and
16 the following proceedings were had:)

17 THE COURT: All right. Even though we are
18 not finished with this witness, it looks like a good
19 spot to break. We will break for lunch. I ask you to
20 come back at 1:30. Please don't discuss the case with
21 anybody at all. Freeze frame your thoughts to the
22 extent humanly possible. Keep the juror badges on.
23 If anyone is talking about a case, move away from

HUDSON - DIRECT

1 them. If that's not possible, identify yourself as a
 2 juror and ask them not to talk about any case. The
 3 courthouse is full of cases and lawyers and
 4 everything. [I don't want you to hear anything that
 5 would possibly cause you to lose your ability to be a
 6 fair and impartial juror.] If anything like that does
 7 occur, let me know so you can share your experience
 8 and we can talk about whether it impacts on your
 9 ability to be a fair and impartial juror.] I will see
 10 you back in about an hour. You all are excused. For
 11 those of you that have your things, you may go or you
 12 are also free to go back to the jury room as well.

13 (Whereupon, the jury left the courtroom.)

14 THE COURT: I ask the correctional officers,
 15 if you can keep him hear until they tell you the jury
 16 has cleared the corridor. I will see you all back and
 17 you will get your mechanical stuff worked out.

18 (Whereupon, Court stood in recess. Following
 19 which, Court reconvened and the following
 20 proceedings were had:)

21 THE COURT: Counsel, I have been working on
 22 the instructions at lunchtime. I just want to touch
 23 base. Mr. Abram, are you going to want a Getz?

DAVID WASHINGTON
 Official Court Reporter

*The urination was
 a lie by the clerk
 and Ryan knew it*

HUDSON - DIRECT

perjured testimony
1 instruction on the prior bad act of the urination or
2 do you wish to waive that?

3 MR. ABRAM: I'll probably waive that. *Why did you waive?
Get instruction?*

4 THE COURT: I think I would do the same if I
5 were in your shoes.

6 Ms. Ryan, on the disorderly conduct, when I
7 was going through the instructions, the disorderly
8 conduct, what is the conduct?

9 MS. RYAN: The conduct in the 7-Eleven, Your
10 Honor. The police officers who were there will be
11 testifying to that.

12 THE COURT: So there was disorderly conduct
13 and resisting arrest in the 7-Eleven?

14 MS. RYAN: Correct.

15 THE COURT: All right. We will wait to see.

16 Thank you.

17 All right.

18 (Whereupon, the jury returned to the
19 courtroom.)

20 THE COURT: You may continue your examination
21 of this witness.

22 FURTHER DIRECT EXAMINATION

23 BY MS. RYAN:

HUDSON - DIRECT

1 Q. Mr. Hudson, you indicated that you called 911
2 from your cell phone?

3 A. Yes.

4 Q. Right after this incident happened on the
5 7th?

6 A. Yes.

7 MR. ABRAM: May we approach, Your Honor?

8 THE COURT: Yes.

9 (Whereupon, counsel approached the bench and
10 the following proceedings were had:)

11 MR. ABRAM: I want to make sure this isn't
12 the one that has the 16 minutes of dead time on it.

13 MS. RYAN: I will play the first part of
14 Mr. Hudson's conversation with the dispatcher.

15 MR. ABRAM: Okay.

16 MS. RYAN: I mean, I'm not playing the whole
17 thing. I am playing the beginning part of the
18 conversation.

19 THE COURT: Remember. if you introduce it
20 into evidence, if there is anything else on this, it
21 can't be on there. Otherwise, we will just hear it
22 and I will not send it back. *where?*

23 MS. RYAN: I can probably get one to trade,

HUDSON - DIRECT

1 copy it.

2 THE COURT: That is up to you. If you want *very*
3 it to go back with them, I'm not letting them have it
4 if anything else is on the tape. You make that
5 decision. *what else is on the tape*

6 MS. RYAN: Okay. My intention is only to
7 play the beginning portion of it. There was a lot of
8 transmissions between this dispatch.

9 THE COURT: I don't want them to get anything
10 Mr. Abram and I haven't heard in the courtroom.

11 MS. RYAN: If I send something back, I do not
12 have it right now. I will have to go back to the
13 office and have someone make it.

14 THE COURT: Just remember this, if he's not
15 testifying, we might get to the jury this afternoon,
16 it looks to me. *he is still in a hurry, he is shortchanging me.*

17 MS. RYAN: I don't necessarily have to put it
18 in. I can just mark it and play it for the jury.

19 THE COURT: You can mark it for
20 identification. You can make it an exhibit. I am not
21 sending it back unless you clean it up.

22 MS. RYAN: That's fine.

23 (Whereupon, counsel returned to the trial

HUDSON - DIRECT

1 table and the following proceedings were had:)

2 THE COURT: Are you moving --

3 MS. RYAN: The State moves this CD as the
4 State's next exhibit.

5 THE CLERK: Admitted as State's Exhibit No.

6 2. - *Did they ask to see the tape? If they did, Groves told them they
could not see it.*

7 MR. ABRAM: No objection, Your Honor. *vacate the*

8 THE COURT: This is what, the 911 matter? *verdict*

9 MS. RYAN: Correct.

10 (Whereupon, State's Exhibit No. 2 was played
11 to the Court and jury.)

12 BY MS. RYAN:

13 Q. Mr. Hudson, when this person in the orange
14 tank top contacted you and you talked with him in the
15 store, you indicated that he had a pocketknife both on
16 the 911 tape and in your testimony. Were you
17 concerned about what he was going to do with that
18 knife?

19 A. Yes.

20 Q. In what way, how were you concerned?

21 A. Whether or not he was going to try to cut me
22 with it or actually use the knife on me. *P. You couldn't cut him
if the blade
wasn't out?*

23 Q. In response to that, what did you feel?

HUDSON - DIRECT

1 A. In response to me feeling threatened by him
2 doing that?

3 Q. Yes.

4 A. That's the point I had backed away from him
5 immediately and ran to the back of the store to call
6 911.

7 Q. Did you speak with police officers at the
8 time of this incident after this incident occurred?

9 A. Yes, I did speak with the police officers.

10 Q. Did you tell the police officer what had
11 occurred?

12 A. Yes.

13 Q. When you spoke with the police officer, were
14 you telling them the truth about what had occurred?

15 A. Yes.

16 Q. When you talked with the police officer, were
17 you voluntarily talking with the police officer?

18 A. Yes, ma'am.

19 MS. RYAN: Your Honor, may we approach?

20 THE COURT: Yes.

21 (Whereupon, counsel approached the bench and
22 the following proceedings were had:)

23 MS. RYAN: Your Honor, I have laid the

HUDSON - DIRECT

(72)

Whitman talked to Abbott according to his own testimony

1 foundation for (3507) for Mr. Hudson's statement to

2 Officer Whitman. The police report and Officer

perjury - why didn't Abram object?

3 Whitman indicates the witness told him he pulled out

4 the pocketknife, he said he unfolded it. The witness'

5 testimony is somewhat unclear on this point. I have

it is clear I did not open it

6 Officer Whitman here prepared to testify. I will let

7 the Court and Mr. Abram figure out the logistics.

8 THE COURT: First of all, she laid the

9 foundation on 3507. And as far as the logistics, if

is objection? he object

10 you disagree, you can make an exception in a moment,

11 Mr. Abram. Historically, how (3507) questions have been

12 resolved is that the lawyer wants to cross-examine the

13 witness now and then allow the 3507 statement to come

14 in and then recross-examine the witness if he wants.

15 The State is obligated to keep him here and put him

what case law?

16 back on the stand. The Supreme Court, in some of its

17 case law, in the particular case law, the defense was

18 put to a particular disadvantage in how that was done

19 in that particular case and suggested that while the

20 person is still on the stand, I interrupt the

21 testimony, take the (3507) testimony from the third -

who is the 3rd party?

22 party, cross-examine that party, and then go back to

23 the original witness. That's a preference that is

check it out

1 always left to the defense counsel. If it is the
2 State asking for it, I basically say whoever the
3 proponent is doesn't get the choice. Do you want to
4 do what I call the regular way and cross-examine and
5 then get another opportunity after the 3507 statement
6 comes in or do you want everything in before you
7 cross-examine him?

8 ? MR. ABRAM: The regular way is fine, Your
9 Honor.

10 THE COURT: Any exceptions to the 3507? It
11 looks like she laid the foundation.

12 MR. ABRAM: No. ?

13 THE COURT: All right.

14 MS. RYAN: When Officer Whitman testifies, he
15 has other things to testify to, but that portion, the
16 3507 though, do we have Mr. Hudson coming into the
17 courtroom?

18 THE COURT: Do you want him inside the
19 courtroom or outside the courtroom?

20 MR. ABRAM: Outside the courtroom.

21 MS. RYAN: Thank you.

22 (Whereupon, counsel returned to the trial
23 table and the following proceedings were had:)

HUDSON - CROSS

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1 BY MS. RYAN:

2 Q. Mr. Hudson, do you still work at Royal Farms?

3 A. No.

4 Q. Why don't you work there any more?

5 A. Because I had another job opening at the
6 YMCA, which is where I work right now.

7 MS. RYAN: I have nothing further.

8 THE COURT: Cross.

9 MR. ABRAM: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. ABRAM:

12 Q. I want to clarify some of your remarks. You
13 say you saw a pocketknife?

14 A. Yes.

15 Q. Do you know about how big it was?

16 A. It wasn't very big. It was maybe about two
17 to three inches maybe.

18 Q. But you didn't see anything pulled out of the
19 knife?

20 A. No, I didn't see the blade pulled out of the
21 knife, but I saw a pocketknife.

22 Q. So it was in a closed position?

23 A. Yeah.

HUDSON - CROSS

1 Q. Was there ever any verbal threat of violence
2 towards you?

3 A. No, but his voice took a tone like he was
4 maybe trying to be a little, you know, maybe threaten
5 me.

6 Q. But there was no actual verbal threat?

7 A. No.

8 Q. We saw on the screen that you turned and left
9 Mr. Cardone's presence. Did he follow you down there
10 when you left?

11 A. No, he didn't follow me down there.

12 Q. He didn't come after you with the knife or
13 anything?

14 A. No, not at that point.

15 Q. After he left your presence, did you have any
16 other interaction with him?

17 A. Not in the beginning, no. When I first
18 walked by, went past him to see what his actions were
19 going to be, that's when I left him. When I turned
20 around and approached towards the front, that's when I
21 began to talk about whether or not can I help him or
22 anything like that. That's how he got involved in the
23 story about what happened the night before.

HUDSON - CROSS

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1 Q. Do you have any idea how long he was talking
2 to you about what happened the night before outside?

3 A. A couple minutes top.

4 Q. Do you mean minutes top, it was that long?

5 A. Yeah.

6 Q. We heard on the 911 tape you said he came at
7 you. Is that an accurate description of what
8 happened?

9 A. Yeah, I would say so.

10 Q. You think he came at you?

11 A. Yes.

12 Q. How would you describe him coming at you?

13 A. He had the pocketknife in his hand and was
14 walking towards me, kind of like speeding up a little
15 bit, which is why I backed and turned away from him.

16 Q. Did he leave the store right away? Pg 75 (4)

17 A. No, not right away. — contradiction

18 Q. What did he do when he was still in the
19 store?

20 A. He stood by the coffee bar. He was saying
21 some kind of stuff. I couldn't hear everything he was
22 saying. As I was saying I was calling the cops, he
23 was making his remarks. I think I heard one thing he

HUDSON - CROSS

LIES
1 said: He doesn't care who I called or whatnot. He
2 was saying more stuff while I was on the phone talking
3 to the lady, so I didn't hear anything.

4 Q. He left the store then?

5 A. Yeah.

6 Q. He didn't threaten you any more?

7 A. No, not after that.

8 Q. I want the clarify: How long do you think he
9 was speaking with you?

10 A. I'd say probably a couple minutes at the
11 most.

12 Q. It is from when he entered the store or just
13 when you two were right next to each other?

14 A. Just when we were right next to each other.

15 Q. Now I am going to attempt to move it back to
16 the point of your first interaction inside the store.

17 (Whereupon, State's Exhibit No. 1 was played
18 to the Court and jury.)

19 BY MR. ABRAM: *P*

20 Q. This is you going up to the front door; is
21 that correct?

22 A. Yeah.

23 Q. So you are counting not from now, but a

*I never threatened
him, whose defense
attys is it, mine or
the other side?*

HUDSON - CROSS

1 little farther in the future when you started talking
2 to him?

3 A. Yeah, as I moved closer to the end of the
4 screen is when we first started talking.

5 Q. Am I there yet?

6 A. No.

7 Q. Tell me when I am there. Is that when you --

8 A. Right here.

9 Q. Can you read the times? Actually I probably
10 can't.

11 A. Is that 8:42?

12 Q. Can you see the seconds on there?

13 A. No, I can see the time, but I can't see the
14 seconds.

15 Q. If you want to take a walk up there and take
16 a look at it. Just go up and read the seconds on
17 there.

18 A. 38.

19 Q. Okay, you can go back and have a seat. So
20 you are saying you talked to him, I guess, until you
21 turned around and go down the aisle?

22 A. Yes.

23 Q. Let me see if I can move forward to that. Is

1 that about when you were done talking?

2 A. Yeah. It's about, yeah.

3 Q. Can you read the timing this time?

4 A. Can I read what now?

5 Q. Can you -- the time you read before?

6 A. 8:43.

7 Q. Can you see the seconds?

8 A. 04.

9 Q. So how long is that actually that you are
10 talking to him? About 26 seconds?

*We said all this in 26 seconds?
No way*

11 A. Yeah.

12 Q. Do you recall seeing headphones on
13 Mr. Cardone?

14 A. Yeah, I did.

15 Q. Did you hear any music or anything coming out
16 of those?

17 A. No, I didn't hear any music.

18 Q. Did you have trouble communicating with him?

19 A. Yeah, I think I did until he took the things
20 off his head.

21 Q. You did until he took the things off his
22 head?

23 A. Yeah.

HUDSON - REDIRECT

1 MR. ABRAM: No further questions, Your Honor.

2 REDIRECT EXAMINATION

3 BY MS. RYAN:

4 Q. Mr. Hudson, so in the time from 8:42:38 to

5 8:43:04, that short period of time you had a *26 seconds*
6 conversation with Mr. Cardone; is that correct?

7 A. Yes.

8 Q. And during -- at the end of that he pulled
9 out the pocketknife?

10 A. Yeah.

11 Q. During that 26 seconds, he said to you what
12 you testified before, that he had been there the night
13 before?

14 A. Yes.

15 Q. So you were talking -- you are both talking?

16 A. Yeah, we were both talking.

17 Q. Did you know what he was talking about the
18 night before at that time?

19 A. No.

20 Q. Are you wearing a uniform when you work at
21 Royal Farms?

22 A. Yeah.

23 Q. What is your uniform?

1 A. That blue hat, blue shirt, black pants.

2 Q. Does anything on that say Royal Farms on it?

3 A. My hat. My shirt does not. My name tag.

4 Q. During that brief time, he asked: Was it you
5 who called the police; is that correct?

6 A. Yes.

*she is leading him, why -
doesn't he from object?*

7 MS. RYAN: I have nothing further.

8 THE COURT: All right. Excused, but you are
9 subject to recall. So I ask to you wait outside,
10 okay?

11 (Witness steps down.)

12 MS. RYAN: The State calls Officer Tyler
13 Whitman.

14 TYLER WHITMAN

15 was called as a witness by and on behalf of the State
16 of Delaware and, having been first duly sworn, was
17 examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MS. RYAN:

20 Q. Officer Whitman, by whom are you employed?

21 A. Rehoboth Police Department.

22 Q. Were you employed with the Rehoboth Beach
23 Police Department in September of 2004?

WHITMAN - DIRECT

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1 A. Yes, I was.

2 Q. Specifically on September 7, 2004, did you
3 have occasion to investigate an incident that occurred
4 at the Royal Farms?

5 A. Yes, I did.

6 Q. Did you speak to Letez Hudson concerning that
7 incident?

8 A. Yes, I did.

*He says on page 102 ① he spoke w/
Hudson not A. Abbott, not Hudson*

9 Q. Did Mr. Hudson say to you at the time you
10 spoke with him whether or not he observed a blade on
11 that knife? *Hudson*

12 A. Yes, he did.

13 Q. What did he exactly say?

*Pg 83 ② he says he doesn't
remember but here he does remember*

14 A. He said he had observed the defendant pull
15 his knife out and unfold the blade opening the knife.

16 Q. Did you interview Mr. Hudson that evening?

17 A. Yes, I did.

18 MS. RYAN: Your Honor, I have nothing further
19 of this witness at this time.

20 MR. ABRAM: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. ABRAM:

23 Q. Do you remember the specifics of this

WHITMAN - CROSS

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1 conversation?

2 A. Vaguely. It's been a little while. I have
3 my notes or my report I can refer to.

4 Q. Are you remembering that he told you that he
5 pulled the blade out in memory or your reports?

6 A. I do remember he said he pulled out the
7 blade, unfolded it and displayed it to him. *Hudson*
denied that

8 Q. Did he describe the blade to you?

9 A. I didn't get that description. He described
10 the knife as a black and silver knife.

11 Q. Why didn't you get a description of the
12 blade?

13 A. I didn't feel it was necessary to get the
14 description of the blade because, at that point, we
15 had already gotten the knife off the defendant. *wrong*

16 MR. ABRAM: Okay. No further questions, Your
17 Honor.

18 THE COURT: Redirect?

19 MS. RYAN: No, Your Honor.

20 (Witness steps down.)

21 MS. RYAN: May we approach?

22 THE COURT: Yes.

23 (Whereupon, counsel approached the bench and

1 the following proceedings were had:)

2 MS. RYAN: Your Honor, the State at this
3 point has Mr. Hudson available if Mr. Abram wishes to
4 cross-examine him on the 3507 statement.

5 THE COURT: Do you want to call that witness
6 for purposes of that?

7 MR. ABRAM: Yes.

8 THE COURT: All right. Call him.

9 (Whereupon, counsel returned to the trial
10 table and the following proceedings were had:)

11 MS. RYAN: The State recalls Letez Hudson.

12 (Witness previously sworn.)

13 RECROSS-EXAMINATION

14 BY MR. ABRAM:

15 Q. Mr. Hudson, do you remember making any
16 statements about the incident in question?

17 A. My statements regarding? You mean to who?

18 Q. To the Rehoboth Beach Police.

19 A. Yes.

20 Q. Do you recall ever stating that you saw the
21 blade out?

22 A. No, I don't recall that.

23 Q. Do you have any memory of ever seeing the

1 blade out?

2 A. No.

3 MR. ABRAM: No further questions, Your Honor.

4 MS. RYAN: I have nothing further.

5 THE COURT: Is he excused now?

6 MS. RYAN: Yes.

7 THE COURT: Thank you, sir.

8 (Witness steps down.)

9 THE COURT: Call your next witness.

10 MS. RYAN: The State calls Wayne Abbott.

11 WAYNE ABBOTT

12 was called as a witness by and on behalf of the State
13 of Delaware and, having been first duly sworn, was
14 examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MS. RYAN:

17 Q. Mr. Abbott, who do you work for?

18 A. The Sussex Family YMCA.

19 Q. Did you have occasion to visit the Royal
20 Farms in Rehoboth on September 7, 2004?

21 A. Yes, I did. I went up to get coffee for
22 myself and my staff.

23 Q. Do you recall what, if anything, occurred

ABBOTT - CROSS

1 when you went to the Royal Farms to get coffee?

2 A. Yes. I parked on the Rehoboth Avenue side,
3 went in through that door. I walked in. I noticed
4 there wasn't any employees around that I could see.
5 As I walked closer to the coffee counter, I saw a
6 gentleman standing there and I could hear him arguing
7 with another person. And I looked over and saw the
8 store clerk another couple aisles past this gentleman
9 that was standing there by the other door.

10 Q. Could you hear what the person who was
11 arguing was saying? Could you hear what was being
12 said?

13 A. I heard very little of it. I heard the clerk
14 say he was going to call the police or 911.

15 MR. ABRAM: Objection, Your Honor.

16 THE COURT: Come up.

17 (Whereupon, counsel approached the bench and
18 the following proceedings were had:)

19 THE COURT: I will sustain. You don't have
20 the foundation for an excited utterance at this point
21 in time.

22 MS. RYAN: Okay.

23 MR. ABRAM: Thank you, Your Honor.

ABBOTT - CROSS

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1 MS. RYAN: Your Honor, may we approach?

2 THE COURT: You may.

3 (Whereupon, counsel approached the bench and
4 the following proceedings were had:)

5 MS. RYAN: Your Honor, I believe that I have
6 laid the foundation for the excited utterance as to
7 what the clerk said. I believe the clerk testified as
8 to what he said, so --

9 MR. ABRAM: That's fine.

10 THE COURT: All right.

11 (Whereupon, counsel returned to the trial
12 table and the following proceedings were had:)

13 BY MS. RYAN:

14 Q. Mr. Abbott, could you hear exactly what the
15 clerk said or the gist of what the clerk said?

16 A. The gist of what the clerk said when I was in
17 the building, he needed to get out of the building or
18 he was going to call the police.

19 Q. What was the response, if any, of the other
20 person?

21 A. The other person said he didn't care who he
22 called. It looked like he had something in his hands,
23 like a knife, waiving with his right hand when he was

ABBOTT - CROSS

1 talking to the clerk.

2 Q. Did you see a knife?

3 A. It looked to be a knife, yes. If it was open
4 or not, I'm not sure, but it looked like the handle of
5 a knife he had in his hand.

6 Q. Could you see the blade of the knife?

7 A. I don't remember seeing the blade open, no.

8 Q. Was it a big knife or a little knife?

9 A. A little knife, a pocketknife.

10 Q. I will hand you what was marked for
11 identification as State's Exhibit B and ask if you
12 recognize it. Do you recognize it?

13 A. What I saw looked a little bigger than that,
14 but I do remember black, yes. — *It was not black - I never*

15 Q. You said you saw it in his hand? *star was allowed*
16 A. In his hand. *to see the knife they claimed*
was mine.

17 Q. How was he holding his hand?

18 A. He was like this with his hand. (Indicating.)

19 Q. What, if anything, happened after you saw him
20 with the object in his hand?

21 A. Right after that, I think he noticed I was in
22 the store and then he started making his way towards
23 that side door, then went out the door and headed

ABBOTT - CROSS

1 towards the circle on Rehoboth Avenue.

2 Q. Did you see whatever he had in his hand, what
3 he did with it?

4 A. I didn't see what he did with it. I waited
5 until he got outside the door. I walked outside the
6 door too and waited for the police.

7 Q. How far away from this person were you when
8 you saw him with this object in his hand?

9 A. Probably a little closer than you and I right
10 now. Maybe 15 feet. I was on the other side of the
11 coffee counter.

12 Q. You indicated that you walked in and you
13 didn't see any employees?

14 A. Not right now -- I didn't see any employees
15 right away until I walked to the coffee.

16 Q. What was your impression of this situation?

17 A. I wasn't sure what was going on at first
18 until I heard the clerk say he was going to call.

19 Q. Did you know that clerk?

20 A. I've known him from going in there, yes.

21 Q. You waited around until the police got there?

22 A. I waited until the police got there.

23 MS. RYAN: Your Honor, I am going to ask to

1 show a portion of this to Mr. Abbott.

2 BY MS. RYAN:

3 Q. Mr. Abbott, do you see that individual at the
4 door?

5 A. Yeah, that's me. That's my YMCA Triathlon
6 shirt I had on that night.

7 Q. What was going on when you walked in the
8 store?

9 A. That's what was going on when I walked in.
10 Now I walked off to the right toward the coffee.

11 Q. Like that?

12 A. Yes.

13 Q. How did you know it was a knife?

14 A. I looked like a knife in his hand, okay?
15 What I saw looked like a knife. Honestly it looked
16 bigger than that at the time, but it looked like a
17 black knife he had in his hand.

18 MS. RYAN: I have nothing further.

19 CROSS-EXAMINATION

20 BY MR. ABRAM:

21 Q. Mr. Abbott, when you saw everything you said
22 you were about 15 feet away?

23 A. Yes.

ABBOTT - CROSS

1 Q. Was there anything between you and the
2 conversation?

3 A. There was the coffee island right there.
4 There is a coffee island right there.

5 Q. Was there anything on top of the island?

6 A. No, because you had the coffeepot set, the
7 spaces on two sides and cream and sugar. I had a
8 pretty straight view of what was going on.

9 Q. You said you saw a knife.

10 A. What I saw, what I saw in his hand looked
11 like an object that looked like a knife, but I didn't
12 see a blade.

13 Q. So you are not positive it was a knife?

14 A. I would say it was a knife, but I would also
15 say I wasn't one-hundred percent positive. There was
16 an object in his hand. He waived it like a knife.

17 Q. How exactly? You said he was waiving it in
18 the air?

19 A. With his right hand up in the air.

20 Q. Was in up high, down low?

21 A. Up high, sir. The clerk was on the other
22 side of the counter there. I think he was trying to
23 show him.

1 Q. Okay. So the interaction you are talking
2 about is after what we just saw?

3 A. Yes, it was after that.

4 Q. Okay.

5 MR. ABRAM: I have no further questions, Your
6 Honor.

7 THE COURT: Redirect, in any?

8 MS. RYAN: No, Your Honor.

9 THE COURT: Witness excused?

10 MS. RYAN: Yes.

11 THE COURT: Thank you, sir.

12 (Witness steps down.)

13 THE COURT: Call your next witness, if any?

14 MS. RYAN: The State calls Officer Paul
15 Parsons.

16 PAUL PARSONS

17 was called as a witness by and on behalf of the State
18 of Delaware and, having been first duly sworn, was
19 examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MS. RYAN:

22 Q. Sergeant Parsons, where do you work?

23 A. For the City of Rehoboth Police Department,

PARSONS - DIRECT

1 Sussex County, State of Delaware.

2 Q. Were you working for the Rehoboth Beach
3 Police Department in September of 2004?

4 A. Yes, I was.

5 Q. On September 7th of 2004, did you have
6 occasion to investigate an incident that occurred at
7 the Royal Farms?

8 A. Yes. I was not the investigating officer,
9 but still the shift supervisor. My shift was working
10 that night. asshole

11 Q. Do you recall who the investigating officer
12 was?

13 A. I believe it was Officer Whitman.

14 Q. Did you respond to the Royal Farms?

15 A. Yes, I did.

16 Q. Did you also respond to somewhere else?

17 A. I went to the 7-Eleven on Rehoboth Avenue.

18 Q. How close is the Royal Farms to the 7-Eleven?

19 A. It's approximately 150, 200 yards.

20 Q. When you responded to the 7-Eleven, what did
21 you observe?

22 A. When I responded to the 7-Eleven, I observed
23 the clerk was there. There was a gentleman, another

PARSONS - DIRECT

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*what witness
7-11?*

1 gentleman there. He was the witness prior to this.
2 He was there. It was kind of late, so there wasn't a
3 lot of people inside the store. And at that point in
4 time, there was other officers with us.

5 Q. Who were the other officers, do you recall?

6 A. Bonnie Ladd. And I think Shannon Judson at
7 some point in time came there. He was riding with
8 Bonnie Ladd that night.

9 Q. Was Officer Whitman there?

10 A. Not initially. He was responding to the
11 complaint.

12 Q. Did he come to the 7-Eleven?

13 A. He went directly to the 7-Eleven first before
14 Royal Farms.

15 Q. You initially went where?

16 A. To the Royal Farms.

17 Q. Did you eventually go to the 7-Eleven?

18 A. I went to the 7-Eleven, yes. I think I
19 misunderstood your question.

20 Q. That's okay. When you responded to the
21 7-Eleven, did you observe anyone in the 7-Eleven that
22 was possibly the suspect of the investigation?

23 A. Yes, I did. As soon as I walked in the door,

PARSONS - DIRECT

1 I saw Officer Whitman talking to Charles Cardone, who
2 is sitting at the table in the blue sweater with the
3 white shirt. They were at the back of the store by
4 the coffee machines and the Slurpee vending machines.

5 Q. At some point did you have occasion to search
6 Mr. Cardone?

7 A. I did.

8 Q. Did you locate anything when you searched
9 Mr. Cardone?

10 A. I did.

11 Q. What did you locate?

12 A. I believe it was in his pants pocket on his
13 right-hand side there was a small pocketknife.

14 Q. I will hand you what was marked for
15 Identification as State's Exhibit B and ask if you
16 recognize what is in this envelope?

17 A. Yes.

18 Q. Is that the knife that you recovered from
19 Mr. Cardone?

20 A. Yes.

21 Q. From his pocket?

22 A. Yes.

23 Q. Can you pull the blade out of that knife, if

PARSONS - DIRECT

1 there is one.

2 A. (Witness complies.)

3 Q. Thank you.

4 MS. RYAN: Your Honor, I move this item in as
5 the State's next exhibit.

6 MR. ABRAM: No objection.

7 THE COURT: Admitted.

8 THE CLERK: State's B for Identification is
9 now admitted as State's Exhibit No. 3.

10 BY MS. RYAN:

11 Q. Officer Parsons, I want to show you something
12 and ask you if this is how Mr. Cardone appeared that
13 evening when you came into contact with him.

14 (Whereupon, State's Exhibit 1 was played to
15 the Court and jury.)

16 BY MS. RYAN:

17 Q. Is that what he was wearing when you came in
18 contact with him?

19 A. Yes.

20 Q. When you said you recovered the knife, the
21 pocketknife in his pocket, which pocket are you
22 referring to?

23 A. Its the cargo pants pocket that you can see

PARSONS - DIRECT

1 the bulging in his pant leg.

2 Q. That's where you recovered it, that pocket?

3 A. Yeah.

4 Q. I will advance this a little bit. See his
5 hand, right arm?

6 MR. ABRAM: Objection, Your Honor.

7 THE COURT: If you are asking him what he
8 sees, they can see it.

9 MS. RYAN: I want to ask him -- may we
10 approach?

11 THE COURT: Yes.

12 (Whereupon, counsel approached the bench and
13 the following proceedings were had:)

14 MS. RYAN: It appears on the surveillance,
15 his pants, he puts this object in his pocket. I want
16 to ask the officer if this is the pocket he found it.

17 THE COURT: Ask him: Right front, left
18 front. You have been leading him. If you said -- you
19 will be leading him. Ask him a question. You are
20 leading him by that. I will sustain the objection.

21 (Whereupon, counsel returned to the trial
22 table and the following proceedings were had:)

23 BY MS. RYAN:

*Gross is giving her
directions*

1 Q. Sergeant Parsons, was it his right pocket or
2 left front pocket that the knife was located in?

3 A. It was on his right side. I believe it was
4 the front pocket, but, you know, it was the right side
5 because we had brought Mr. Cardone out of the
6 7-Eleven. He was resisting. Officer Whitman had him
7 from behind, was on his left side. I had
8 Mr. Cardone's right hand, the area which I started
9 searching first. As to what exact pocket it was, I
10 believe it was the cargo pocket. I could be wrong,
11 but it was his right side.

12 Q. You recovered it from him?

13 A. Yes.

14 Q. You were on his right side?

15 A. Yes.

16 Q. You indicated Mr. Cardone was resisting. In
17 what way was he resisting?

18 A. He was struggling, trying to flail. When I
19 was walking -- when I was initially walking in,
20 Officer Whitman was trying to talk to Mr. Cardone. He
21 was not responding. He kept, you know, when he asked
22 him a question, he was: What, what, what, like that
23 to him. And he was not listening to Tyler's commands.

PARSONS - CROSS

1 MS. RYAN: I have nothing further.

2 THE COURT: Cross.

3 CROSS-EXAMINATION

4 BY MR. ABRAM:

5 Q. You stated that Mr. Cardone kept saying:

6 What, what, to every question asked to him?

7 A. He did state that, yes.

8 Q. Is it possible he didn't understand what was
9 going on?

10 A. No, it's not.

11 Q. Why is that not possible he didn't understand
12 what was going on?

13 A. In between saying the what, what, what,
14 Mr. Cardone would come out and make a comment to Tyler
15 like he's cognizant of what was going on.

16 Q. Did he have headphones on when you saw him in
17 these conversations?

18 A. He did at the beginning, but was still
19 continuing to do that even when the headphones weren't
20 on his head.

21 Q. Where exactly did you recover the knife?

22 A. Out in front of the 7-Eleven.

23 Q. It wasn't back at the station?

Report says different

(101)

1 A. It was in the front of the 7-Eleven.

2 Q. Okay.

3 MR. ABRAM: No further questions.

4 THE COURT: Redirect, if any?

5 MS. RYAN: No, Your Honor.

6 THE COURT: All right. Thank you, sir.

7 (Witness steps down.)

8 THE COURT: Call your next witness, if any.

9 MS. RYAN: The State calls Officer Tyler
10 Whitman.

11 (Witness previously sworn.)

12 DIRECT EXAMINATION

13 BY MS. RYAN:

14 Q. Officer Whitman, where do you work?

15 A. For the Rehoboth Beach Police Department.

16 Q. Were you working with the Rehoboth Beach
17 Police Department in September of 2004?

18 A. Yes, I was.

19 Q. On September 7, 2004, did you have occasion
20 to respond to the complaint at the Royal Farms?

21 A. Yes, I did.

22 Q. Where did you go first?

23 A. I went to the Royal Farms very briefly, just

*why doesn't Abram
pursue the perjury by
asking about previous
testimony?*

WHITMAN - CROSS

*why did he ¹⁰² contact
Abbott and not Hudson?*

1 long enough to contact Mr. Abbott. At which time, he
2 told me the defendant had gone across the circle, over
3 to the 7-Eleven. So I proceeded directly over there.
4 I believe that was when everyone else came on the
5 scene at the Royal Farms.

*Hudson's
talk to Hudson
he testified*

6 Q. But you went to the 7-Eleven?

7 A. Yes.

8 Q. When you went to the 7-Eleven, what, if
9 anything, did you observe?

10 A. As I approached the 7-Eleven, I observed,
11 through the window, a white male wearing an orange
12 tank top and headphones standing back in the area of
13 the coffee pots.

14 Q. That description was of some significance to
15 you in your investigation?

16 A. Yes, that's the description I received from
17 Mr. Abbott of the subject.

*Hudson called 911
why are they*

18 Q. Did you go into the 7-Eleven?

19 A. Yes, ma'am.

*following
Abbott's desc -
cripter?*

20 Q. You talked to this white male with the orange
21 tank top by the coffee?

22 A. Yes.

23 Q. What transpired when you contacted that

WHITMAN - CROSS

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1 person?

2 A. As I approached him, the dispatcher put out a
3 1039, which is a use caution because the subject was
4 reported as displaying a knife at the Royal Farms.

5 Q. What happened?

6 A. I approached Mr. Cardone. He had his
7 headphones on, but they were back behind his ears.

8 They weren't actually on his ears. I couldn't hear

9 any music coming from them. I asked him to remove
10 them at least once, which he did not do. He kind of

11 looked at me and looked away. I attempted to speak to

12 him a couple more times, which it was appearing more

13 to ignore than not hear me. At which time, I knocked

14 the earphones of his head to be certain he can hear me

15 and it wasn't the earphones impairing his ability to

16 hear me.

17 Q. What happened then?

18 A. I believe we had a brief exchange. At that
19 point, I had asked him to put his coffee and bag down.

20 He responded with: Huh. And I asked him to do that a
21 couple of times. I then grabbed him by the arm. He

22 dropped the bag and his coffee. At that point,

23 Sergeant Parsons and PFC Ladd entered the 7-Eleven and

WHITMAN - CROSS

1 helped me escort him out.

2 Q. During the course of this contact with him,
3 when you grabbed his arm, what, if anything, did he
4 do?

5 A. He attempted to pull away and continued to do
6 that as we were escorting him out of the store. He
7 was also using some obscenities, cursing at us when we
8 escorted him out. It got a little louder once we got
9 out in the parking lot. — *the Clerk said she didn't hear*

10 Q. Did you handcuff him in the store? *me say anything*

11 A. I honestly don't remember if I handcuffed him
12 in the store or if we did that once out on the
13 sidewalk. I thought we did that in the store.

14 Q. What reaction did he have to your handcuffing
15 him?

16 A. He continued to pull his arms, hands and arms
17 away as I continued to try to pull his arms back.

18 Q. You indicated he became louder outside the
19 store?

20 A. Yes.

21 Q. What, if anything, did you do once you got
22 outside the store?

23 A. Once outside the store, we patted him, sat

1 him down on the curb, patted him down to check to see
2 if we would find the knife he supposedly had.

3 Q. Did you find the knife?

4 A. No, I did not.

5 Q. What did you do next?

6 A. Once he was patted down, PFC Ladd -- as we
7 got him outside and started patting him down, PFC Ladd
8 got her vehicle, drove it around, and he was placed in
9 her vehicle and driven to the police department.

10 Q. Did he cooperate being placed in the police
11 vehicle?

12 A. As best I can remember, yes, he did.

13 Q. Do you see the individual who you contacted
14 at the 7-Eleven here in the courtroom?

15 A. Yes, I do.

16 Q. Where is he?

17 A. He is seated at the table over there wearing
18 the black vest and white shirt.

19 MS. RYAN: I have nothing further.

20 THE COURT: Mr. Abram.

21 MR. ABRAM: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. ABRAM:

He didn't find the knife because they never searched me even though I was supposed to have a knife. They are all lying.

PARSONS - CROSS

1 Q. Officer, I don't remember what the code
2 number was used. You said you were supposed to come
3 up with caution?

4 A. A 1039. It's: Use caution.

5 Q. How exactly did you use caution when you came
6 upon Mr. Cardone? *they*

7 A. I was just cognizant of where his hands were.

8 Q. You don't recall where you cuffed him, right?
9 You don't recall if it was inside or outside?

10 A. That's correct. *continually*

11 Q. So you walked him from inside the store even
12 though he allegedly had a knife on him? *contradict*

13 A. I had a hold of his hands by the wrists.

14 Q. Both his hands? *themselves...*

15 A. Either I had one and Sergeant Parsons had
16 one. I believe that was the case. I had his left arm
17 and Sergeant Parsons had his right arm. Whether he
18 was handcuffed inside the store or outside, I know
19 that's the way we walked him out of the store.

20 Q. On the way out, did you walk him past the
21 clerk working there?

22 A. Yes, we did.

23 Q. Did you see Mr. Cardone doing anything before

PARSONS - CROSS

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1 you walked in the store?

2 A. He appeared to be fixing a cup of coffee.

3 Q. He wasn't causing any problem when you walked
4 in?

5 A. Not as I walked in, no.

6 Q. Where exactly do you recall the knife being
7 found?

8 A. I didn't find the knife. Sergeant Parsons
9 found the knife.

10 Q. Do you recall where Sergeant Parsons found
11 the knife?

12 A. No, I do not.

13 Q. You don't know?

14 A. No.

15 Q. Do you remember putting it in your police
16 report?

17 A. I believe I put it in there. Sergeant
18 Parsons found it, but -- I can refer to it if you
19 like.

20 Q. Yeah, would you please.

21 A. It says at R, Rehoboth Police Department,
22 Sergeant Parsons located the small pocketknife
23 matching the description to be the V one.

Parsons
says on
page 96
he found
it

PARSONS - CROSS

1 Q. So you found it at the Rehoboth Beach Police
2 Department?

3 A. That's what the report says.

4 Q. It is that you found the knife at the
5 Rehoboth Police Department?

6 A. That's what the report says.

7 Q. Did you ever show the knife to Mr. Hudson?

8 A. No, I did not.

9 Q. You didn't. Okay.

10 MR. ABRAM: Your Honor, may I approach?

11 THE COURT: You may.

12 BY MR. ABRAM:

13 Q. Just for clarification, is that the knife in
14 question?

15 A. Yes, it is.

16 Q. Can you unfold the blade for me.

17 A. (Witness complies.)

18 Q. Approximately how long do you think that
19 blade is?

20 A. Approximately two inches.

21 Q. Approximately two inches?

22 A. Yes, sir.

23 Q. How wide do you think that blade is?

unfolded it is 2'

1 A. Maybe an inch.

2 Q. An inch wide, just the blade, not the knife
3 itself?

4 A. Maybe a quarter of an inch, half inch,
5 somewhere in there.

6 Q. Okay.

7 MR. ABRAM: No further questions.

8 THE COURT: Redirect, if any?

9 MS. RYAN: I have nothing further.

10 THE COURT: Thank you.

11 (Witness steps down.)

12 THE COURT: Next witness, if any?

13 MS. RYAN: The State rests.

14 MR. ABRAM: Your Honor, may we approach, Your
15 Honor?

16 THE COURT: You may.

17 (Whereupon, counsel approached the bench and
18 the following proceedings were had:)

19 MR. ABRAM: I'd like to make a motion for
20 directive verdict on some of the counts. I assume we
21 shouldn't be doing that in front of the jury.

22 THE COURT: You are right. Proceed.

23 MR. ABRAM: I don't have any witnesses.

*How does he arrive
at that conclusion?*

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1 THE COURT: If you want to make your motions,
2 make your motions now. The State rested in front of
3 the jury. Right now.

4 MR. ABRAM: The aggravated menacing requires
5 a deadly weapon involved and deadly weapon under the
6 definition of law, if a pocketknife is under three
7 inches that is closed -- *Graves actually talked A brown*

8 THE COURT: Carried in a closed position. *directed
verdict
on the
aggr. men*

9 MS. RYAN: In a closed position.

10 MR. ABRAM: The knife in question, all the
11 evidence, aside from one statement from one of the
12 officers, which is totally refuted by the witnesses,
13 says the knife was closed at all times. *GRAVES
is
showing
his bias,
prejudice,
and his my
bias for him
being released*

14 THE COURT: It is a question of fact.
15 Looking at it in the light most favorable to the
16 State, you have testimony it was open. There is
17 testimony that he reacted to it. *Bias & Prejudice*

18 MR. ABRAM: Okay. The disorderly conduct.
19 There is no evidence at all there is any disorderly
20 conduct involved in the 7-Eleven. All the witnesses
21 said he was fine walking in the store. I would think
22 all the actions in there are related to the resisting
23 arrest charge, not the disorderly conduct.

*How can I resist arrest when I was not told I was
being placed under arrest?*

DAVID WASHINGTON
Official Court Reporter

Witness shows me B bias and prejudice

1 THE COURT: When did he become disorderly?
2 Is that out of the police officer's custody?

3 MS. RYAN: He didn't.

4 THE COURT: I will throw that one out. Grant
5 your relief.

6 MR. ABRAM: I have nothing further, sir.

7 THE COURT: I will take a short break. I
8 will tell them -- I'm not worried about typing the
9 whole information at this time.

10 MR. ABRAM: Do we want to address the jury
11 instructions now?

12 THE COURT: If you have some instructions on
13 yours?

14 MR. ABRAM: Yes. Okay.

15 THE COURT: But you need to rest. After we
16 do this, go back, rest, and then we will go back and
17 do the jury instructions.

18 MR. ABRAM: Okay.

19 (Whereupon, counsel returned to the trial
20 table and the following proceedings were had:)

21 MR. ABRAM: Your Honor, the defense rests.

22 THE COURT: All right. Ladies and gentlemen,
23 what I have been told by the attorneys is that is the

*Graves
told the attys to rest*

DAVID WASHINGTON
Official Court Reporter

*He told them to rest, he told
Abram to rest...*

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what transpired?

1 end of the evidence that you will get. I have been
2 working on some legal instructions. I will give you
3 the charge. I will go back in chambers now with the
4 lawyers and review that with them. We will take our
5 afternoon break right now. I hope to have this case
6 to you this afternoon in a short period of time.

7 Okay. We will stay in session as the jury
8 returns to the jury room.

9 (Whereupon, the jury left the courtroom.)

10 THE COURT: Okay, counsel, I will see you
11 back in chambers. Bring what I've given you thus far
12 back. *why wasn't, or isn't, a record of what transpired?*

13 (Whereupon, Court stood in recess. Following
14 which, Court reconvened and the following
15 proceedings were had:)

16 THE COURT: All right. You all have the
17 instructions. I added the additional section *what?*
18 Mr. Abram wanted. Any exceptions to the instructions
19 as prepared, counsel?

20 MS. RYAN: No, Your Honor.

21 MR. ABRAM: No, Your Honor.

22 THE COURT: All right. Let's bring in the
23 jury.

1 MS. RYAN: Before we bring in the jury, the
2 911 call, I contacted my office. They were not able
3 to make a copy of the partial CD. I wanted to make
4 the Court aware of that.

5 THE COURT: I don't want the CD going back.
6 The CD of the 911 stays out.

7 MS. RYAN: I will request if the jury
8 requests to hear it again, they hear the portion.

9 THE COURT: We will bring them back into
10 court and we will play it. We have a similar problem
11 with the CD. They cannot play it except there. The
12 equipment does not play it in the jury room.

13 MS. RYAN: They have to know how to do it.

14 THE COURT: I will tell them on both things.

15 MS. RYAN: There is definitely other things.
16 Mr. Abram and I went over the surveillance rather
17 extensively. There is nothing I would say more
18 helpful to the defendant. — *what does she mean?*

19 THE COURT: I don't want them to see anything
20 other than what they have seen in the court. That
21 way, I don't have to worry if they see some kid buying
22 a pack of cigarettes. *what does he mean?*

23 MS. RYAN: There was a time frame span that

1 goes several hours before and several hours after the
2 incident. There is a lot else on this CD. If they
3 wanted to watch it again, they can watch the portion
4 on that. I believe both times we started, I believe
5 we started at 8:39. I don't know that we went any
6 further than that, for four minutes after that.

7 THE COURT: I will tell them if they want to
8 see the 911 tape, if they ask, we will bring them in
9 and play the portion with no testimony. Play it and
10 send them back.

11 MS. RYAN: Okay.

12 (Whereupon, the jury returned to the
13 courtroom.)

14 MS. RYAN: Your Honor, we are going to do
15 instructions first, then closings?

16 THE COURT: Yes.

17 MS. RYAN: Thank you.

18 THE COURT: Ladies and gentlemen, I am about
19 ready to start on the instructions that I will give
20 you. I have reviewed those with the lawyers. They
21 are familiar, likewise, before their closing
22 arguments, I do want to make you aware, normally once
23 something becomes an exhibit, you all get to take it

Graves is telling you now -
different it is for them if they wish, or need,
to hear the 911 tape and see the CD... That's

back to the jury room. But the 911 tape and the CD *picked up*
contains information that has a lot of other things *plus,*
that are irrelevant to this trial. So what I am *it will be*
directing the lawyers to do, I told the lawyers if you *at 4:00 PM,*
do want to hear the 911 tape again or if you want to *anybody*
see the surveillance tape again from beginning to end, *would*
I will bring you back in and, without testimony or *to go*
comment, play that because we have the equipment in *home...*
here to get it right to the point. Like I say, there *why*
is a lot of data on there that is not relevant. It *didn't*
would be a waste of time for you to see and since you *Graves*
hadn't seen it all, I am going to screen those matters *tell the*
in this fashion. If you are like me, you could be in *jury to*
there pushing buttons all day long and still not get *come*
it right. I am electronically challenged when it *back the*
comes to these things. *following*
day?

Members of the jury, you have now heard all
the evidence that will be presented in this case, and
in a few minutes, you will hear the arguments for the
State and defense. I shall not review the evidence
that has been presented to you because you, the jury,
are the sole and exclusive judges of the facts of the
case, of the credibility of the witnesses, and of the

From pages 115 - to 134 (19 pages at closing of the day) Graves

DAVID WASHINGTON
Official Court Reporter

he is doing just that

is bending the jury's
says instead of letting
them go home and
liberate the following

1 weight and value of the testimony of each witness.

2 I shall now instruct you as to applicable
3 principles of law governing this case. No single one
4 of these instructions states all of the law applicable
5 to this case. Therefore, you should listen to and
6 consider all of the instructions together in reaching
7 your verdict. It is your duty as jurors to follow the
8 law as I shall state it to you. You are not to be
9 concerned with the wisdom of any rule or law stated by
10 me in these instructions. You must apply the law as
11 instructed even if you do not agree with that law
12 because it is the law of the State of Delaware as
13 enacted by the Legislature and it is applicable to
14 everyone.

15 It is your duty to determine the facts and to
16 determine them only from the evidence presented to
17 you. You are to apply the law, as I will instruct
18 you, to the facts as you find them and, in this way,
19 decide the case.

20 If, in these instruction, any rule,
21 direction, or idea is stated in a manner which appears
22 to give it more significance than other instructions,
23 no such emphasis is intended by me, and none should be

1 inferred by you.

2 The defendant is charged with possession of a
3 deadly weapon during the commission of a felony,
4 aggravated menacing, resisting arrest, and criminal
5 trespass in the third degree. The defendant has plead
6 not guilty to these charges.

7 The defendant comes before you by way of an
8 indictment filed by the State of Delaware. The
9 indictment is a mere accusation against the defendant.
10 It is the charging document. It is not, in itself,
11 any evidence of the guilt of the defendant and you
12 should now allow yourselves to be influenced in any
13 way, however slightly, by the fact that an indictment
14 has been filed in this case.

15 In these instructions, I will explain to you
16 the elements of the offenses charged in the
17 indictment. The elements of an offense are those
18 physical acts, attendant circumstances, results and
19 states of mind which are specifically included within
20 the definitions of the offense in the Criminal Code.
21 If words are defined by the Criminal Code, I will give
22 you the Code definitions. Otherwise, give words their
23 commonly accepted meanings. I will also explain the

1 burdens of proof the law imposes upon the State, as
2 well as some other aspects of your function as jurors.
3 Then I will review the possible verdicts.

4 Count 1 charges Charles F. Cardone, on or
5 about the 7th day of September, 2004, in the County of
6 Sussex, State of Delaware, did knowingly possess a
7 deadly weapon, a knife, during the commission of
8 aggravated menacing, a felony, as set forth in Count 2
9 of the information, which is herein incorporated by
10 reference.

11 In order to find the defendant guilty of
12 possession of a deadly weapon during the commission of
13 a felony, you must find all of the following elements
14 have been established beyond a reasonable doubt: One,
15 there was a deadly weapon. Title 11 of the Delaware
16 Code defines deadly weapon as including a firearm, a
17 bomb, a knife of any sort other than an ordinary
18 pocketknife carried in a closed position, a
19 switchblade knife, billy, blackjack, bludgeon, metal
20 knuckles, slingshot, razor, bike chain, ice pick, or
21 any dangerous instrument which is used or attempted to
22 be used to cause death or serious physical injury.
23 Dangerous instrument means any article or substance

Graves describes

602(a) Menacing

to confuse jury into thinking

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How can it be deadly
weapon definition is included
dangerous instrument

Crimes already defined a deadly weapon on page 118
neither 602(a) or (b) mention death or serious

1 which, under the circumstances which it is used or
2 attempted to be used, is readily capable of causing
3 death or serious physical injury. For the purpose of
4 this definition, an ordinary pocketknife shall be a
5 folding knife having a blade not more than three
6 inches in length; *why did he add "for the purpose of this offense"*

7 And, two, the defendant possessed the deadly
8 weapon. Possession generally means dominion, control,
9 and authority, but a person is in possession of a
10 deadly weapon within the meaning of this section only
11 when it is physically available and accessible to him
12 during the commission of a crime;

13 And, three, the defendant acted knowingly.
14 In other words, he was aware that he possessed a
15 deadly weapon;

16 And, four, the defendant possessed a deadly
17 weapon during the commission of a felony. That is
18 aggravated menacing, Count 2, which I will review with
19 you in a moment.

20 If, after considering all of the evidence,
21 you find that the State has established beyond a
22 reasonable doubt that the defendant acted in such a
23 manner as to satisfy all of the elements which I just

1 stated, at or about the date and place in question,
2 you should find the defendant guilty of possession of
3 a deadly weapon during the commission of a felony. If
4 you do not so find, or if you have a reasonable doubt
5 as to any of the elements, you should find the
6 defendant not guilty of possession of a deadly weapon
7 during the commission of a felony. - *the felony is aggr. menacing*

8 Count 2 charges aggravated menacing.

9 Mr. Cardone, on or about September 7th, 2004, in this
10 county and state, did intentionally place Letez Hudson
11 in fear of imminent physical injury by displaying what
12 appeared to be a deadly weapon, a knife, in violation
13 of Title 11, Section 602(b) of the Delaware Code.

14 Delaware Law defines the offense of
15 aggravated menacing, in pertinent part, as follows: A
16 person is guilty of aggravated menacing when, by
17 displaying what appears to be a deadly weapon, the
18 person intentionally places another person in fear of
19 imminent physical injury.

20 In order to find the defendant guilty of this
21 charge, you must find the following elements have been
22 established beyond a reasonable doubt: One, the
23 defendant displayed to Mr. Hudson what appeared to be

It was not open, therefore, it was not a deadly weapon
1 a deadly weapon, a knife;

2 And, two, the defendant displayed the deadly
3 weapon intending to place Mr. Hudson in fear of. *it is not a deadly weapon, it is a knife, it is not a*
4 imminent physical injury. A person acts intentionally
5 when it is his conscious object to engage in conduct
6 of that nature or cause that result.

7 If, after considering all of the evidence,
8 you find that the State has established beyond a
9 reasonable doubt that the defendant acted in such a
10 manner as to satisfy all of the elements which I just
11 stated, at or about the date and place stated in the
12 indictment, you should find the defendant guilty of
13 aggravated menacing. If you do not so find, or if you
14 have a reasonable doubt as to any of these elements,
15 you should find the defendant not guilty of aggravated
16 menacing.

17 Count 3 alleges resisting arrest, that
18 Mr. Cardone, on September 7th, 2004, in this county
19 and state, did intentionally attempt to prevent a
20 police officer, Officer Ronald T. Whitman of the
21 Rehoboth Police Department, from effecting an arrest
22 by pulling away from said officer and attempting to
23 fight officers taking him into custody.

1 In order to find the defendant guilty of
2 resisting arrest, you must find that the State has
3 established beyond a reasonable doubt: One, that the
4 defendant intentionally attempted to prevent the
5 police officer from effecting the arrest of himself by
6 pulling away from the officer and/or attempting to
7 fight officers taking him into custody. A person acts
8 intentionally when it is his conscious object or
9 purpose to engage in conduct of that nature.

10 If, after considering all of the evidence,
11 you find that the State has established beyond a
12 reasonable doubt that the defendant acted in such a
13 manner, as to satisfy the element I just stated, at or
14 about the date and place stated in the indictment, you
15 must find the defendant guilty of resisting arrest.
16 If you do not so find, you must find the defendant not
17 guilty of resisting arrest or if you have a reasonable
18 doubt, you must find him not guilty.

19 Count 4 is criminal trespass, that
20 Mr. Cardone, on September 7, 2004, in this county and
21 state, did knowingly enter and remain unlawfully upon
22 real property, to wit: The defendant did enter the
23 property of the Royal Farms store after being told not

He states to the jury I'm guilty

123

*Royal Farms
is a public
place only
a court order
can keep
me out*

1 to return to the property of the Royal Farms store).

2 In order to find the defendant guilty of this

3 offense, you must find that the State has established

4 beyond a reasonable doubt: One, the defendant entered

5 unlawfully upon real property, that being the Royal

6 Farms store. The term "unlawfully" means without

7 authorization or permission. Real property means any

8 property situated in this State or any interest in

9 such real property, including, but not limited to, any

10 leases of or mortgage upon such real property;

11 And, two, the defendant acted knowingly. In

12 other words, he knew he was unlawfully entering the

13 Royal Farms store.

14 If, after considering all of the evidence,

15 you find that the State has established beyond a

16 reasonable doubt that the defendant acted in such a

17 manner as to satisfy all of the elements I just

18 stated, at or about the date and place stated in the

19 indictment, you must find the defendant guilty of

20 criminal trespass in the third degree. If you do not

21 so find, or if you have a reasonable doubt, you should

22 find the defendant not guilty.

23 I have instructed you that an element of the

1 offense charged is that the defendant acted with a
2 required state of mind, such as the defendant acted
3 intentionally or knowingly. It is, of course,
4 difficult to know what is going on in another person's
5 mind. Therefore, our law permits the jury to draw an
6 inference, in other words, to reach a conclusion about
7 the defendant's state of mind from the facts and
8 circumstances surrounding the acts the defendant is
9 alleged to have done. In reaching this conclusion,
10 you may consider whether a reasonable person in the
11 defendant's circumstances would have had or lacked the
12 requisite state of mind or belief. You should,
13 however, keep in mind at all times that it is this
14 defendant's state of mind which is at issue here, and
15 in order to convict the defendant, you are required to
16 find beyond a reasonable doubt that the state of mind
17 or belief required for guilt existed.

18 The law presumes every person charged with a
19 crime to be innocent. This presumption of innocence
20 requires a verdict of not guilty unless you are
21 convinced by the evidence that the defendant is guilty
22 beyond a reasonable doubt.

23 The burden of proof is upon the State to

1 prove all the facts necessary to establish the crime
2 charged beyond a reasonable doubt.

3 Reasonable doubt is a practical standard.

4 On the one hand, in criminal cases, the law
5 imposes a greater burden of proof than in civil cases.
6 Proof that a defendant is probably guilty is not
7 sufficient.

8 In other words, there are very few things in
9 the world we know with absolute certainty. Therefore,
10 in criminal cases, the law does not require proof that
11 overcomes every possible doubt. ← *contradictory*

12 Proof beyond a reasonable doubt is proof that
13 leaves you firmly convinced of the defendant's guilt. *or*

14 Therefore, based upon your conscientious consideration *could*
15 of the evidence, if you are firmly convinced that the
16 defendant is guilty of the crime charged, you should
17 find the defendant guilty. If, on the other hand, you
18 think this is a real possibility or, in other words, a
19 reasonable doubt that the defendant is not guilty, you
20 must give the defendant the benefit of the doubt by
21 finding the defendant not guilty. Of course, you must
22 consider each of the charges separately and vote for
23 each of the charges separately.

1 There are two types of evidence from which a
2 jury may properly find the facts of a case. One is
3 direct evidence. The testimony of an eyewitness is an
4 example of direct evidence. The other is indirect or
5 circumstantial evidence; that is, the proof of facts
6 or circumstances from which the existence or
7 non-existence of other facts may reasonably be
8 inferred. In this case, the State and defense have
9 relied, in part, upon circumstantial evidence.

10 It is not unusual in a criminal case to rely
11 upon circumstantial evidence.

12 To warrant a conviction, all of the evidence,
13 direct and circumstantial, must lead you to conclude
14 beyond a reasonable doubt that the accused committed
15 the offense or offenses charged. *or did not*

16 You, the jury, are the sole judges of the
17 credibility of each witness who has testified and of
18 the weight to be given to the testimony of each.

19 If you should find the evidence in this case
20 to be in conflict, then it is within your province to
21 reconcile the conflicts, if you can do so, as to make
22 one harmonious story of it all. If you cannot
23 reconcile these conflicts, then it is your duty to

1 give credit to those portions of the testimony which
2 you believe is worthy of credit, and you may disregard
3 that portion of the testimony which you do not believe
4 to be worthy of credit. *If jurors do not believe testimony, they*
do not disregard, they find not
5 In considering the credibility of the *guilty*

6 witnesses and in considering any conflict in
7 testimony, you should take into consideration each
8 witness' means of knowledge, strength of memory and
9 opportunity for observations, the reasonableness or
10 unreasonableness of the testimony, the consistency or
11 inconsistency of the testimony, the motive actuating
12 the witness, the fact, if it is a fact, that the
13 testimony has been contradicted, the witness' bias, or
14 prejudice, or interest in the outcome of the
15 litigation, the ability of the witness to have
16 acquired the knowledge of the facts to which the
17 witness testified, the manner and demeanor of the
18 witness while on the witness stand, the apparent
19 truthfulness of the testimony, and any and all other
20 facts and circumstances shown by the evidence which
21 may affect the credibility of the testimony.

22 There is a statute in this State that reads
23 as follows: The fact that a criminal act was

what is the statute?

1 committed while the person committing such act was in
2 the state of intoxication, or was committed because of
3 such intoxication, is no defense to any criminal
4 charge if the intoxication was voluntary.

5 You have heard evidence of unsworn statements
6 of witnesses which occurred before trial. Such *what is*
7 testimony is permissible under a provision of a *the Statute*
8 Delaware Statute which reads, in pertinent part, as
9 follows: In a criminal prosecution, the voluntary
10 out-of-court statement of a witness who is present and
11 subject to cross-examination may be used as
12 affirmative evidence with substantive independent
13 testimonial value. This rule shall apply whether the
14 witness' in-court testimony is consistent with the
15 prior statement or not. *Bullshit, that is perjury*

16 With regard to this provision, caution must
17 be exercised by the jury when a conflict exists
18 between the out-of-court statement and the in-court
19 testimony, or when a conflict exists among the
20 out-of-court statements themselves. The jury should
21 be particularly careful if there is no evidence to
22 corroborate an inconsistent out-of-court statement.
23 Nevertheless, the jury may convict on such a statement

1 if the jury is satisfied beyond a reasonable doubt
2 that the statement is true.

3 You may have noticed that the defendant,
4 Mr. Cardone, is in custody. When a person is accused
5 of a crime, it is not unusual that a person is
6 incarcerated from the time of his arrest until the
7 trial. I instruct you that you must not, in any way,
8 infer that Mr. Cardone's incarceration is evidence of
9 guilt in this matter.

10 Also during the course of the trial and
11 during these instructions, Mr. Cardone may have been
12 referred to as the defendant. This is a customary
13 designation in the Superior Court. You must
14 understand, however, that this characterization does
15 not, in any way, suggest Mr. Cardone is guilty of any
16 of the crimes charged against him.

17 Each of these attorneys has a role; that is,
18 to zealously and effectively advance the claims of the
19 party he or she represents within the bounds of the
20 law. Each attorney may argue all reasonable inference
21 from the evidence in the record. However, it is not
22 proper for an attorney to state his or her personal
23 opinion as to the truth or falsity of any testimony or

nor is it proper for a judge to show bias and

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prejudice

1 evidence or state his or her personal opinion as to
2 the guilt or innocence of an accused. What each
3 attorney personally thinks or believes about the
4 testimony or evidence in a case is not relevant, and
5 you are instructed to disregard any personal opinion
6 or belief concerning the testimony or evidence which
7 either attorney may have offered during the course of
8 the trial or in their opening statements or closing
9 arguments.

10 What each attorney tells you in the opening
11 statement or closing argument is not evidence.

12 Evidence consists of testimony from the witnesses
13 while testifying from the witness stand and the
14 exhibits that are introduced through their testimony.
15 It is this evidence and only this evidence which you
16 may consider in reaching your verdicts.

17 I instruct you that your verdict must be
18 based solely and exclusively on the evidence in the
19 case; that you cannot be governed by passion,
20 prejudice, sympathy, public opinion, or any motive
21 whatever except a fair and impartial consideration of
22 the evidence; and that you must not, under any
23 circumstances, allow any sympathy which you may have

1 or entertain for any of the persons involved in this
2 case to influence you to any degree in arriving at
3 your verdict.

4 The defendant has chosen not to testify. The
5 defendant has a constitutional right to testify or not
6 testify as he chooses. The fact that the defendant
7 did not testify must not be construed by you as an
8 indication that the defendant is guilty of the crimes
9 charged. Like every other person charged with an
10 offense, this defendant is presumed innocent until
11 proven guilty beyond a reasonable doubt.

12 Furthermore, as I told you in the beginning
13 of the case, because the burden of proof is upon the
14 State to prove the existence of all the elements of
15 the crime beyond a reasonable doubt, the defendant is
16 not required to present any evidence in his own
17 behalf. You shall not draw any inference of guilt or
18 innocence from the defendant's choice not to testify.

19 How you conduct your deliberations is solely
20 within your province. However, I would like to
21 suggest that you discuss all the issues fully and give
22 all jurors a fair opportunity to express their views
23 before committing yourself to a particular view. Each

1 of you has a duty to consult with each other with an
2 open mind and to deliberate with a view toward
3 reaching an agreement. Each of you should decide the
4 case for yourself, but only after impartially
5 considering the evidence with your fellow jurors. You
6 should not surrender your honest convictions solely
7 because of the opinions of your fellow jurors, or
8 merely for the purpose of returning a verdict, but you
9 should not hesitate in re-examining your own view and
10 change your opinion if you are persuaded by another
11 view.

12 The possible verdicts are as follows: As to
13 Count 1, possession of a deadly weapon during the
14 commission of a felony, guilty as charged or not
15 guilty; as to Count 2, aggravated menacing, guilty as
16 charged or not guilty; as to Count 3, resisting
17 arrest, guilty as charged or not guilty; as to Count
18 4, the criminal trespass charge, guilty as charged or
19 not guilty.

20 All twelve jurors must unanimously agree to
21 any verdict returned by the jury. Again, you must
22 consider and vote on each count separately.

23 To reach a verdict of guilty, you must find

1 that the State has proved the elements of a particular
2 offense unanimously and beyond a reasonable doubt.

3 When you have agreed upon your verdicts,
4 notify the bailiff. The bailiff will inform you when
5 to come back to the courtroom.

6 When you come in to deliver the verdict, the
7 clerk will ask the foreperson as to each charge, what
8 is the jury's verdict. Your foreperson will announce
9 the verdict.

10 The Court does not get involved in the
11 appointing of foreladies or forepersons or foremen. I
12 will let you decide if you want somebody basically
13 directing you or running your proceedings in
14 deliberations. We do ask we know who the person is
15 that is reporting the jury's verdict. Therefore, it
16 is the customary practice to ask the person that sits
17 in the No. 1 seat, ma'am, that would be you to deliver
18 the jury's verdict.

19 If you do not want to do that, you want to
20 pass it to somebody else, fine, just let the bailiff
21 know which juror it will be when you come in. You
22 will get copies of these jury instructions because I
23 just gave you a mouthful. I will send these back with

3

1 you. It has a verdict sheet on it to mark things to
2 make it easier for you. After reviewing it, you may
3 still have a question. If you have a question, write
4 it out. Whether I can answer you or not, I will still
5 bring you back in the courtroom and tell you. There
6 are certain things I cannot help you with. For
7 example, you may say: Why didn't we see such and
8 such, we would like to see such and such. What I will
9 say is: You have got to decide the case based upon
10 what's on your plate, and not speculate as to what is
11 not before you. Sometimes I'll get questions like:
12 Well, could you tell us what the second witness said
13 about such and such. And I can't tell you that
14 because it's not my recollection. I don't have the
15 ability to produce instant transcripts. So I ask you *Bullshit*
16 to rely on your collective recollections. *apped* If you want
17 to see or hear the 911 tape or listen and watch the
18 surveillance again, let me know and we will bring you
19 back and let you do that.

20 Closings.

21 MS. RYAN: Ladies and gentlemen, the judge
22 has just given you the jury instructions and the law
23 that applies to this case. Nowhere in those jury

*IT is not a deadly weapon when
it is closed*

135

1 instructions did you hear that it does not apply if it
2 is just a little knife. It is a little knife, but it
3 is a knife that is capable of doing exactly what it
4 was intended to do here by Mr. Cardone, which is to
5 make Letez Hudson in fear of imminent physical injury.
6 Letez Hudson backed up and fled when that was
7 displayed to him. That was Mr. Cardone's intent. He
8 confronted him with something that Mr. Hudson had no
9 idea about had even occurred the night before, but he
10 said: It was you, it was you that called the police
11 the night before at the Royal Farms when he had
12 urinated in public. He confronted Mr. Hudson and
13 intended to place him in fear of imminent physical
14 injury. Mr. Hudson testified he thought -- he was
15 afraid he was going to be stabbed. He ran. It's a
16 little knife. That's not being hidden from you.
17 That's what it is, but as little as it was, Mr.
18 Cardone's purpose and intent was to place Mr. Hudson
19 in fear of imminent physical injury and that's exactly
20 what he did: Displayed it. Mr. Hudson took off in a
21 matter of seconds and called 911. Despite the fact
22 Mr. Cardone had been told the night before by Officer
23 Judson not to return to Royal Farms, the management

*No that is
not intent -
injury
Pg 58...
it's stated
I asked
him if it was
him not that
I stated what
Pyron lies
in her
closing*

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*No, he didn't run
His testimony was
I backed away*

1 did not want you there, do not come back, within 24
2 hours later, he comes back and confronts somebody that
3 has no idea what he was talking about. He hears
4 something outside. He checks what it is. This is a
5 uniformed employee of Royal Farms. Mr. Cardone
6 displays the knife to him. The exact intent was to
7 make him fear he was about to be harmed with that
8 knife.

9 Mr. Abbott walks into a tense situation and
10 sees this going down, kind of observes the clerk who
11 appeared to be upset and Mr. Cardone saying: I
12 don't care who you call, sees the same thing in his
13 hand, sees it in his right hand. Officer Parsons told
14 you that he located the knife in Mr. Cardone's pocket,
15 the knife that has been entered into evidence. You
16 will recall on the surveillance video, as Mr. Hudson
17 runs down the aisle, Mr. Cardone walks down that same
18 aisle where Mr. Hudson just ran and turns and appears
19 to put something in his pocket and walks back to where
20 Mr. Abbott is by the coffee and walks out of the
21 store. Moments later he is confronted by the police.
22 He has the same knife in his pocket. He resisted
23 arrest when the police try to tell him to pull the

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*no, I resisted arrest because nobody
advised me I was
under arrest*

No. 1

No

*They did not tell me I was being
placed under arrest*

1 headphones down, put the coffee down and he doesn't
2 want to put his arms behind his back.

3 The State asks you to find him guilty of
4 possession of a deadly weapon during the commission of
5 a felony, the felony of aggravated menacing, and the
6 criminal trespass, which is for coming back to the
7 Royal Farms after he was told not to be there. Thank
8 you.

9 THE COURT: Mr. Abram.

10 MR. ABRAM: Now I am here and I am second
11 again. Unfortunately for me, I don't get the last
12 word. She gets the chance to come back up and comment
13 on what I say. She obviously will have an answer to
14 the little bit I have to say.

15 The question appears to be: Was the knife
16 open. You heard in the jury instructions the
17 definition of a deadly weapon. It said a knife, but
18 not an ordinary, closed pocketknife. The question is:
19 Was this pocketknife open. You heard the testimony of
20 Mr. Hudson, who apparently had the knife near him, as
21 well as Mr. Abbott who was also in the store that had
22 the knife near him. Neither one of them said it was
23 open. Mr. Abbott said he didn't recall, he didn't

1 believe it was that way. Mr. Hudson had no problem
2 saying this knife was not open. As the officer here
3 stated, this knife, he says, is two inches. You will
4 be able to take a look at this and be able to figure
5 out. It's not. It has to be at least three inches. *confesses*
6 I'm not here to instruct you on the law. That's what *the jury*
7 the jury instructions are for. You go back and refer
8 to them, refresh your recollection of what they are
9 and what the testimony was. But I ask you to consider
10 the two people that were privy to this incident that
11 stated it was closed. The only testimony you have it
12 was open comes from Officer Whitman.

choice side is on?
Parsons said he cannot reduce testimony... Ray to rely on that testimony.
13 Now, if you recall at another point in the
14 trial, the issue came up: Where was the knife at.
15 Sergeant Parsons found the knife, said he found it
16 outside the 7-Eleven. Officer Whitman in his report
17 stated it happened at the Rehoboth Beach Police
18 Department. There is another inconsistency between
19 police officers. The other inconsistency is between
20 direct witnesses and Officer Whitman. All the
21 inconsistencies. Officer Whitman is different from
22 the people that actually viewed these events. In
23 order for you to find him guilty, you have to believe

1 Officer Whitman on those.

2 You have also been advised about resisting
3 arrest. As the jury instructions pointed out --
4 again, you will get a chance to see them again, you
5 don't have to take my word for it. One of the
6 elements you have to find, you heard a lot of
7 testimony that Mr. Cardone was not necessarily
8 responsive, but I don't -- you have to recall if there
9 was any allegations of him actually fighting. There
10 was no allegations he hit any officer, attempted to
11 hit an officer, kick an officer, punch an officer. He
12 did none of that. And the Judge informed you of the
13 common definition of that. Attempted fighting is not
14 a definite definition in the jury instructions. You
15 can see that.

16 The other count is a criminal trespass. You
17 heard Officer Judson. He informed Mr. Cardone he was
18 not welcome at Royal Farms. You also heard Officer
19 Judson say he didn't put this down anywhere in
20 writing. You also heard Mr. Hudson, the employee of
21 Royal Farms come in. He asked Mr. Cardone if he could
22 help him with anything when he walked in. He didn't
23 inform him he wasn't allowed in the store. That

... it has to be a court order to prohibit a person from going into a public place

1 didn't happen. He asked if he can help him with
2 anything. So it is up to you to decide if he knew
3 that he was breaking the law in this regard.

4 I think I have just about covered everything
5 I wanted to cover today. I wanted to make sure you
6 clearly read the jury instructions and follow the law
7 as instructed and compare the testimony of the
8 witnesses and determine who you believe to be the most
9 credible and base your verdict on that.

10 THE COURT: Rebuttal.

11 MS. RYAN: Mr. Abram asked you to answer a
12 couple of questions. The last question he asked you
13 was about the criminal trespass. He said that
14 Mr. Hudson went up and asked if he can help him. That
15 charge doesn't depend on what Mr. Hudson knew.
16 Mr. Hudson hadn't been there the night before. He
17 didn't know that Mr. Cardone had been told not to come
18 back. The important part is Mr. Cardone knew that he
19 wasn't supposed to be there because he was told by
20 Officer Judson the night before: Do not go back to
21 Royal Farms, the management does not want you back
22 there. It isn't what Letez Hudson knew. He was doing
23 his job and approached a customer that appeared needed

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*public places
need a written
court order to
stay out*

1 help. It's what Mr. Cardone knew for the criminal
2 trespass.

3 The other big question is: Was the knife
4 open. In answering that question, the Judge mentioned
5 to you circumstantial evidence. I ask you to consider
6 in answering that question -- about was that knife
7 open -- the two people that testified they thought it
8 was a knife. Now, if you had it in your hand, this
9 item you couldn't even see it, but you had the blade
10 open, you could see it was a knife, two people had the
11 impression it was a knife that was displayed, both Mr.
12 Abbott and Mr. Hudson. If you are also concerned
13 about whether or not that blade was open, look at the
14 reaction of Letez Hudson. In a matter of seconds,
15 8:43:02, he backs up. 8:43:03, a defensive stance.
16 8:43:04, if Mr. Cardone just had that pocketknife
17 closed in his hand, you could barely see it, what
18 would Mr. Hudson had done? The next second, 8:43:04,
19 running. When asking yourself was the knife open,
20 think about the quick impression that the two people
21 had that saw it. A knife. Think about Mr. Hudson's
22 reaction to when he sees the knife. And, again, it is
23 not the size of the knife that matters, it's the

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*She is lying to
the jury about
the testimony that
says the knife was not
open.*

1 intent of Mr. Cardone. He intended to place Mr.
2 Hudson in fear of imminent physical injury and he did
3 exactly that. Thank you.

4 THE COURT: All right. I just want to double
5 check. It is ten minutes of four. You will all have
6 to start deliberating. This is not, in any sense, a
7 rush or beat the clock or anything of that nature. I
8 want you to take as much time as appropriate, but I
9 wanted to make sure everybody can come back tomorrow
10 we told you it was a two-day case. Is everybody okay
11 tomorrow? If anybody cannot, put your hand up.

12 Ma'am, can I see you at the sidebar.

13 (Whereupon, counsel approached the bench and
14 the following proceedings were had:)

15 (Whereupon, Juror No. 11 approached the
16 bench.)

17 THE COURT: Yes, ma'am?

18 JUROR No. 11: My husband and I are the head
19 of a soup kitchen at our church. Tomorrow is the last
20 day to serve to them.

21 THE COURT: You were in the courtroom when I
22 said this case may go two days. We announced it when
23 you began this morning.

1 JUROR No. 11: Yes, but I didn't realize it
2 was going to be two days like that.

3 THE COURT: Well, what time tomorrow are you
4 doing this at church?

5 JUROR No. 11: We start at 6:00 o'clock in
6 the morning and we go usually until 3:00 o'clock in
7 the afternoon.

8 THE COURT: I'm still confused as to if you
9 knew this was a two-day trial --

10 JUROR No. 11: Like I told the lady, this was
11 my first time ever doing this and I apologize. When
12 you asked that question, I said to the lady next to
13 me, I guess I need to get up and explain to them, but
14 I don't know whether you would let me do that then.

15 THE COURT: You need to come up and explain
16 it.

17 JUROR No. 11: She said --

18 THE COURT: You should have come up. I will
19 excuse you. You may go home.

20 JUROR No. 11: Thank you.

21 (Whereupon, Juror No. 11 was excused and let
22 the courtroom.)

23 THE COURT: Exceptions?

1 MS. RYAN: No.

2 MR. ABRAM: No.

3 (Whereupon, counsel returned to the trial
4 table and the following proceedings were had:)

5 THE COURT: All right. Ms. Fletcher, you are
6 now No. 11. When you back in, you will sit in that
7 seat, okay? Okay, you can now begin your
8 deliberations.

9 I guess I better swear the bailiffs.

10 (Whereupon, the bailiffs were duly sworn.)

11 THE COURT: Okay. All right. Now you can
12 begin deliberating. If you want to hear the 911 tape
13 or observe the other things, we can bring you back in.
14 Just let the bailiff know, okay?

15 THE BAILIFF: I apologize, Your Honor. We
16 wanted to get the alternate out.

17 (Whereupon, the jury left the courtroom.)

18 THE COURT: Any exceptions to the
19 instructions as given?

20 MS. RYAN: No, Your Honor.

21 MR. ABRAM: No, Your Honor.

22 THE COURT: All right. If you are going to
23 return to your offices, please make sure there is a

1 number the bailiff can reach you that someone will
2 pick up after hours. I will probably keep them an
3 hour, an hour-and-a-half.

4 MS. RYAN: For the record, which one is the
5 juror -- I am confused about the numbers. Which one
6 left?

7 THE COURT: The one that left was Judy
8 Griffith, the No. 11 spot, replaced with the
9 alternate, Ms. Fletcher, No. 2.

10 MS. RYAN: I am confused because in the jury
11 profile, Judy Griffith is listed as white.

12 THE COURT: I can't help you there. Thank
13 you.

14 (Whereupon, Court stood in recess to await
15 the jury's verdict. Following which, Court
16 reconvened and the following proceedings were
17 had:)

18 THE COURT: All right. Could you get the
19 jury.

20 THE BAILIFF: Yes, sir.

21 (Whereupon, the jury returned to the
22 courtroom.)

23 THE BAILIFF: Juror No. 4.

1 THE COURT: Ladies and gentlemen, the bailiff
2 tells me Juror 4 will read the verdicts. Ladies and
3 gentlemen, has the jury been able to reach a unanimous
4 verdict on all counts?

5 THE JURY: Yes.

6 THE COURT: Madam Clerk, would you take the
7 verdict from Juror No. 4.

8 THE CLERK: Mr. Foreman, please rise. Has
9 the jury agreed upon a verdict?

10 JUROR No. 4: Yes.

11 THE CLERK: Does the jury find the defendant
12 at the bar as to Count 1, possession of a deadly
13 weapon during the commission of a felony guilty as
14 charged or not guilty? *prejudicial*

15 JUROR No. 4: Not guilty.

16 THE CLERK: As to Count 2, aggravated
17 menacing guilty as charged or not guilty? *prejudicial*
assumes guilt

18 JUROR No. 4: Guilty as charged.

19 THE CLERK: As to Count 3, resisting arrest,
20 guilty as charged or not guilty?

21 JUROR No. 4: Guilty as charged.

22 THE CLERK: As to Count 4, criminal trespass,
23 guilty as charged or not guilty?

1 JUROR No. 4: Guilty as charged.

2 THE CLERK: Thank you. Please be seated.

3 Members of the jury, hearken to the verdict as the
4 Court has recorded it, your foreman says you find the
5 defendant at the bar, as to Count 1, possession of a
6 deadly weapon during the commission of a felony, not
7 guilty, as to Count 2, aggravated menacing, guilty as
8 charged, as to Count 3, resisting arrest, guilty as
9 charged, as to Count 4, criminal trespass in the third
10 degree, guilty as charged, so say you all?

11 THE JURY: Yes.

12 THE COURT: Ladies and gentlemen, I thank you
13 very much for your service. You all are excused.
14 Like I say, because of the craziness of the holidays,
15 you may have -- if you wanted it -- drawn the
16 short-service straw. I think you have. Like I say, I
17 am glad you were able to participate in one of our
18 trials.

19 THE BAILIFF: They may want to call in
20 Tuesday night.

21 THE COURT: For the Court of Common Pleas?

22 THE BAILIFF: Yes, sir.

23 THE COURT: You can get the instructions as

1 you leave. Thank you, all. You all are excused.

2 (Whereupon, the jury was excused and left the
3 courtroom.)

4 THE COURT: All right. What sentencing date
5 are you using?

6 THE CLERK: Either May 13th or May 27th.

7 THE COURT: Let's use May 13th.

8 What is the defendant's priors, if any, for
9 purposes of bond review at this time, since right now
10 there is no mandatory time?

11 He has been incarcerated since September 7th?

12 MR. ABRAM: Yes, Your Honor.

13 MS. RYAN: Yes. Just give me a second.

14 Mr. Cardone has a conviction and actually a pending
15 violation of probation from this court for assault in
16 the second degree, possession of a deadly weapon
17 during the commission of a felony, and that conviction
18 dates back to January of 2003.

19 THE COURT: That is pending the disposition
20 of these charges?

21 MS. RYAN: Yes. It was attempted to be *ab.*
22 resolved prior to the trial, but we were not able to
23 do that. So that violation of probation --

1 THE COURT: Then the violation of probation
2 will be heard on that same day.

3 The new conviction is the basis for the
4 violation, Mr. Abram.

5 MR. ABRAM: Your Honor, are we reviewing bond
6 today?

7 THE COURT: That is what I am doing right
8 now. This charge, in itself, let's call it a happy
9 ending as far as nobody getting hurt, but the behavior
10 as shown by this charge, in light of the fact he was
11 on probation for these other charges kind of knocks me
12 back a little bit. I had been -- I raised it because
13 I was considering lowering the bond, but now I am kind
14 of on the other side of the fence. You have to talk
15 to me. I need to know your position.

16 MR. ABRAM: Is there a separate bond set for
17 the VOP at this time?

18 THE COURT: I expect there is a separate bond
19 on the VOP. Right now, since he was convicted of
20 these charges, I will set new bond on these charges.

21 MR. ABRAM: I think right now the current
22 bond of 42,500 cash --

23 THE COURT: On these charges?

1 MR. ABRAM: Yes.

2 THE COURT: One of them he was found not
3 guilty. It will be knocked down to a certain degree.
4 Anything else, counsel?

5 MR. ABRAM: I guess there was no minimum
6 mandatory on the time he's got. He's done seven
7 and-a-half months. He has a violation of probation
8 pending. The other two were misdemeanors. I guess of
9 the bad charges, he ended up on the better end of the
10 charges today. And given another big bond potentially
11 for the VOP, I think that 42,500 cash right now is
12 very excessive.

13 THE COURT: But the violations of probation
14 are assault second and weapons, felony charges.

15 MR. ABRAM: Yes. I believe he has nine years
16 backed up on this.

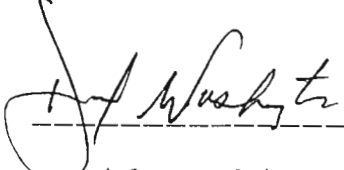
17 THE COURT: I will revoke bond on these
18 charges right here. I think it's best Mr. Cardone not
19 get out between now and sentencing so we can take a
20 good look at him through a presentence investigation
21 and I think that will be most helpful to him. I think
22 in the long run, it may be helpful to Mr. Cardone.
23 Okay. Thank you, all.

1 (Whereupon, the proceedings in the
2 above-entitled matter concluded.)
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DAVID WASHINGTON
Official Court Reporter

C E R T I F I C A T E

I, DAVID WASHINGTON, an Official Court Reporter of the Superior Court of Delaware, Certification #121-PS, do hereby certify the above and foregoing pages, 3 through 150, to be a true and accurate transcript of the proceedings therein indicated on Monday, March 28, 2005, as was stenographically reported by me and reduced to computer-aided transcript under my direct supervision, as the same remains of record in the Sussex County Courthouse, Prothonotary's Office, Georgetown, Delaware.



David Washington
Oct. 21, 2005

Date

DAVID WASHINGTON
Official Court Reporter